

No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation,
Claimant of the Motor Tanker
"URANIA," Her Engines, Tackle, Apparel,
Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-
partners doing business under the name and
style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume II
(Pages 439 to 934)

Appeal from the United States District Court
Western District of Washington,
Northern Division.

FILED
JAN 4 - 1950

PAUL P. O'BRIEN,

No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation,
Claimant of the Motor Tanker
"URANIA," Her Engines, Tackle, Apparel,
Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-
partners doing business under the name and
style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume II
(Pages 439 to 934)

Appeal from the United States District Court
Western District of Washington,
Northern Division.

JOSEPH L. SWEETIN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Will you state your name, please?

A. Joseph L. Sweetin.

Q. And your occupation?

A. Marine superintendent.

Q. Where are you employed?

A. Commercial Ship Repair, Winslow division.

Q. How long have you been so employed?

A. I have been in the Winslow division since about February 1. Previous to that, from August 1, 1948, to February 1, 1949, at Commercial Ship Repair, Seattle division.

Q. What is your experience in the ship repair business?

A. I have been directly connected with the ship repair business since August 1, 1948.

Q. Prior to that time, what was your experience?

A. Prior to that time, I was a surveyor for a period [207] of about one year, and prior to that time an operating manager, marine superintendent, port engineer of a commercial steamship company, and prior to that time chief engineer of seagoing vessels, and on down to my original experience. I first started to sea when I was 18 years old.

Q. What is your total years of experience with ships?

(Testimony of Joseph L. Sweetin.)

A. Total years of experience with ships, approximately 30.

Q. What licenses do you hold?

A. Chief engineer, ocean steam, any tonnage, any horsepower.

Q. Are you a member of any professional societies?

A. I am a member of the Society of Naval Architects and Marine Engineers; a charter member and past president of the Society of Port Engineers of Puget Sound.

Q. Did you go aboard the ex-Navy tanker YO 73 sometime in August, 1948? A. Yes, sir.

Q. When did you first visit that vessel?

A. I think it was about August 2nd or 3rd, 1948.

Q. Where was it lying then?

A. It was lying at Foss' Moorage in the canal, Lake Union.

Q. What was the purpose of your visit?

A. I was there as a representative of the Commercial [208] Ship Repair Company, who had received a call from General Steamship Company to send a representative on board the vessel to consult with Mr. Antippas relative to repairs expected to be accomplished on board the vessel.

Q. And the vessel you are referring to is the same as the *Urania*, subsequently named the *Urania*? A. That is true.

Q. Did you ever meet Mr. Antippas aboard the vessel?

(Testimony of Joseph L. Sweetin.)

A. I had met Mr. Antippas on board the vessel on the occasion of my first call there.

Q. Did you have any conversation with him at that time? A. Yes, I did.

Q. With respect to what?

A. With respect to the repairs that he was contemplating effecting on the vessel.

Q. Did you have any discussion relative to Mr. Harry Williams?

A. Yes. Mr. Harry Williams was mentioned during our conversation between Mr. Antippas and myself.

Q. What was said?

A. Mr. Antippas advised me that a Mr. Harry Williams was proceeding from New York to Seattle, who would be his representative during the period of repairs.

Q. Did you prepare specifications covering a bid by Commercial Ship Repair on that vessel? [209]

A. Yes, sir.

Q. Why?

A. Well, when I visited the ship on the first occasion. I went over the ship with Mr. Antippas. I was advised by Mr. Antippas that only certain items of an already prepared specification were to be accomplished at that time. He had a specification, and blueprints had already been made up concerning a rather comprehensive conversion.

Mr. Antippas advised me that he did not intend to effect the complete conversion of the vessel as

(Testimony of Joseph L. Sweetin.)

reflected in those specifications in the present instance, and he and I personally surveyed the vessel, went over the items that he did wish to accomplish.

After having surveyed the work, we did then refer to a copy of the specifications that Mr. Antipapas had in hand, and took notes from it of the items that he wished performed. It seemed to me at the time that it was sort of an extraordinary way of——

Mr. Howard: Just a minute. I think what it seemed to the witness is not admissible at this time.

The Court: Sustained.

Q. Did you have a further statement to make concerning the preparation of those specifications?

The Court: I think you should ask him a specific question. It is liable to call forth the very answer that has just been objected to. You had better confine his thinking.

Q. You did prepare specifications?

A. Yes, I did prepare specifications covering the extra work that Mr. Antipapas stipulated he wished to have performed.

Q. Do you know whether a bid was made on those specifications by Commercial Ship Repair?

A. Yes. I helped work the bid up.

Q. Did you after your first meeting with Mr. Antipapas meet him again? A. Yes.

Q. When was the next occasion?

A. I believe I saw Mr. Antipapas just momentarily a couple of days after the first instance, and again at the opening of the bids.

(Testimony of Joseph L. Sweetin.)

Q. And did you thereafter see him at Mr. Black's office?

A. That same day the bids were opened.

Q. Who was then present?

A. Mr. Black, Mr. Finn, myself, Mr. Antippas, Mr. Harry Williams, the captain of the vessel.

Q. Were any discussions had at that time concerning Mr. Williams?

A. Mr. Williams was present at that time. [211]

Q. Was there any discussion with respect to his function concerning the repairs to the *Urania*?

A. Yes. He was—Mr. Antippas had stated that he was to be the repair representative of the owner during the repairing period on the *Urania*, that he was expected to stay there and see that the repairs were performed.

Q. Was anything further said concerning the extent of Mr. Williams' authority?

A. Not directly to me, sir.

Q. In your presence?

A. Yes, in my presence.

Q. Do you recall what was said and by whom?

A. As far as Mr. Williams' status was concerned, it was stated that he was to be the direct representative of the owner, and that he would be there during the period of the repairs and would have authority to act for the owner.

Mr. Howard: "It was stated"—I don't understand who stated that.

The Witness: Mr. Antippas stated that. Mr. Antippas was the owner.

(Testimony of Joseph L. Sweetin.)

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. That was the extent of the information that you [212] heard given, the instructions that you heard given by Mr. Antippas as to the authority of Mr. Williams?

A. Yes, sir. Mr. Williams—I mean Mr. Antippas was not in direct conversation with me. He was in conversation with Mr. Black.

Q. In other words, it all boiled down to the fact, did it not, that Mr. Williams was to be out here during the progress of the work to see that it was performed?

A. How was that again? I don't know about it all boiling down to that. It was a fact he was to be here during the period of the repairs to see that they were performed.

Mr. Howard: That is all.

Redirect Examination

By Mr. Hokanson:

Q. When you say it all boiled down to his being there, do you have any further understanding of what is contemplated by that answer?

A. I didn't say that. I objected to that point, that it all boiled down to that. I don't use that language.

Q. What was the extent of Mr. Williams' authority, as you understood it from the conversation had at that time?

(Testimony of Joseph L. Sweetin.)

A. With my past experience to draw from, it was my understanding that Mr. Williams was to be the direct [213] representative of the owner, would have full supervision of all repairs to be made on that vessel and have full authority as representative of the owner to order additional repairs if he so desired, and to settle prices on all such repairs if they were ordered.

Mr. Hokanson: That is all.

Recross-Examination

By Mr. Howard:

Q. And that last statement is based on your past experience? A. On my past experience.

Q. Rather than what was said on that occasion?

A. That was my understanding of the general terms of the conversation as held that day in the office.

Mr. Howard: No further questions.

Mr. Hokanson: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Finn. [214]

FRED A. FINN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. Fred A. Finn.

Q. Where do you live?

A. San Francisco, California.

Q. What is your occupation?

A. I am general superintendent of Commercial Ship Repair, Inc.

Q. With offices where?

A. Offices at San Francisco, California.

Q. What is your experience in ship repair work?

A. 1941, '42 and '43, I was in repair work with the Alaska Steamship Company; and 1944, I believe, and 1945 and a part of 1946 was at Winslow Marine Railway, and since that time I have been employed by Commercial Ship Repair.

Q. In what capacity were you employed by the Winslow Marine Railway?

A. As a machinist foreman. [215]

Q. Prior to that time, you were employed by Alaska Steamship Company?

A. Alaska Steamship Company.

Q. In what capacity?

A. As machinist lead man.

Q. What experience have you had at sea?

A. I have had about 15 years at sea.

Q. In what capacity?

(Testimony of Fred A. Finn.)

A. All the way from wiper to chief engineer.

Q. How long were you a chief engineer?

A. Approximately one year, active.

Q. Do you hold a chief engineer's license?

A. I do.

Q. How long have you held it?

A. Since 1942.

Q. Did you go aboard the YO 73 in Seattle, Washington, in the early part of August 1948?

A. I did.

Q. What was the occasion for that?

A. I went to make a survey in preparation for a bid.

Q. At whose request?

A. I went out there at the request of the General Steamship Company.

Q. In what condition did you find the vessel to be at that time? [216]

A. Very poor condition, outwardly.

Q. What was contemplated by the survey?

A. Well, I surveyed the vessel for the specific reason to determine somewhat the cost of labor and material it would require to do certain work on the vessel.

Q. And did you consult with anyone aboard the vessel when you made that visit?

A. At the time I made the visit to the vessel, Mr. Sweetin and I were together.

Q. Were specifications made up to your knowledge by Commercial Ship Repair covering a prospective bid?

A. There was.

(Testimony of Fred A. Finn.)

Q. Do you know whether a bid was made covering those specifications? A. There was.

Q. Were you in Mr. Black's office on or about August 4, 1948 in the presence of Mr. Demetri Antippas and Mr. Williams, Mr. Sweetin and the master of the vessel? A. I was.

Q. Do you recall any conversations concerning Mr. Williams on that occasion? A. I do.

Q. Specifically, what were those conversations about?

A. Generally, it was stated by Mr. Antippas that Mr. Williams would be a direct representative here while the [217] vessel was undergoing repairs.

Q. Was there any discussion with respect to additional work on the vessel?

A. Yes. It was stated at that time by Mr. Antippas that Mr. Williams would be his direct representative and would have charge and authority to make any additional work.

Mr. Howard: To make any additional work?

The Witness: Yes, to give out any additional work as it was required.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Finn, was anything said at that time by Mr. Antippas as to the approval of accounts?

A. I didn't understand you.

Q. Was anything said by Mr. Antippas at the

(Testimony of Fred A. Finn.)

time of this conference in Mr. Black's office on August 4 as to approval of accounts?

A. I don't quite get what you mean by that question, sir.

Q. At the time this conference was held in Mr. Black's office on August 4, do you recall whether Mr. Antippas made any statement as to the authority of Mr. Williams to approve accounts for work performed? [218]

A. Yes, I understood it that way, what he said.

Q. Did he so state?

A. He said Mr. Williams would have full authority to act for him.

Q. Was anything said at that time about progress payments being required?

A. Not that I recall.

Q. Were you present at Winslow during the progress of this work?

A. Part of the time only.

Q. Did you participate in the drafting of the specifications that were used in making the bid for this work?

A. Partly, yes.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: With the Court's permission, Mr. White has a witness and will now examine him.

The Court: You may proceed. [219]

CARL J. NORDSTROM

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. White:

Q. State your name, please.

A. Carl J. Nordstrom.

Q. What is your residence? A. Seattle.

Q. What is your occupation?

A. Consulting naval architect and engineer.

Q. Where are your offices?

A. 905 Second Avenue, Seattle.

Q. Would you outline briefly to the Court your background in marine work?

A. I have been in the shipbuilding and naval architecture side of it for a matter of about 33 years. The early part of my experience was gained in shipbuilding and ship repair plants, and the last 20 years, approximately, have been in professional practice on my own, except four and a half years that I was in the Navy during the late war.

Mr. Howard: If the Court please, we will concede [220] that Mr. Nordstrom is recognized as a qualified, competent and experienced marine architect in this area, if that will limit the interrogation.

Mr. White: I believe the Court should know something about his qualifications.

The Court: He has appeared as a witness many times in court. I have heard his testimony before relating to his qualifications, unless you feel, how-

(Testimony of Carl J. Nordstrom.)

ever, that this record should have in it a statement of his qualifications. I am sure that in view of the stipulation the Court recognizes that he is a qualified consulting architect and engineer.

Mr. White: I will confine it to one question, so that the record may show it.

Q. What duties did you have during the last war?

A. Most of the time, I was planning officer in an organization called the Assistant Industrial Manager's Office, with headquarters here in Seattle, and as such I directed all of the ship repair and conversion operations of the Navy in the Thirteenth Naval District, that is, all such work that was carried on outside the Navy Yard itself.

Q. From your experience, are you acquainted with proper ship yard accounting procedures?

A. Reasonably so.

Q. Were you present in court to hear Mr. Harper, a [221] previous witness, testify as to accounting procedures of Commercial Ship Repair yard?

A. I was.

Q. Would your experience bear out Mr. Harper, or vice versa, as to the accounting practice used?

Mr. Howard: I object to the form of that question, it being so general. It would afford the witness an opportunity to make a——

The Court: Pick out some part of the testimony and relate it as a supposititious question, supposing that such and such were the testimony in the case,

(Testimony of Carl J. Nordstrom.)

or testimony tending to establish so and so, and ask his opinion.

Q. Mr. Harper testified, I believe, as to the manner in which cost was reckoned on a job known as the *Urania* at Commercial Ship Repair yard. Would his testimony in that respect—does it agree with your experience as to the proper accounting procedures to be followed in reckoning costs in a ship repair yard?

Mr. Howard: Same objection. It is so general, if the Court please, that I don't believe it is a proper question to ask of an expert witness at this time in the manner in which it has been propounded.

The Court: I think the record as to this specific question should show what the conditions are submitted [222] to this witness for his reaction and opinion.

Mr. White: Your Honor, it is my opinion that if any specific matter is to be gone into, it can be gone into on cross-examination. I do not wish to extend the record by asking him about each practice.

The Court: I believe the Court should, and the Court does, sustain the objection.

Q. Assuming a conversion job of a Navy YOG into a tanker for commercial trade, would \$1.15.7 per hour be high or low as overhead per hour on direct labor in reckoning the cost?

Mr. Howard: I object to that unless it is further established as to what the area is in which the work is being performed, and also on the ground that

(Testimony of Carl J. Nordstrom.)

counsel has identified this as a YOG, and it is not a YOG.

The Court: Is there any evidence now or expected to be in the record that it is that kind of a vessel?

Mr. White: It is a YO, I am informed, Your Honor.

The Court: Eliminating the "G", is that what you are now doing?

Mr. White: Yes, Your Honor.

The Court: Restate your question.

Q. Speaking of the Puget Sound area, I will ask you whether \$1.15.7 per man hour is a reasonable or unreasonable overhead on direct labor in a job of conversion of a former [223] YO oiler?

Mr. Howard: I am sorry to keep objecting, but he hasn't got any time in here, whether it is this year or during the war when Mr. Nordstrom was in the business of supervising this work, or when it was.

The Court: Specify the time.

Q. During the period of 1948, Mr. Nordstrom?

A. I assume I am free to answer?

The Court: You may answer that.

A. The overhead figure that you gave there—what was it?

Q. \$1.15.7.

A. \$1.15.7 an hour is not an unusual overhead figure. You will find overhead costs of that magnitude appearing in job after job. They vary up and down.

(Testimony of Carl J. Nordstrom.)

Q. With respect to the ship repair business, is it a stable business or a speculative business?

A. It is quite unstable as to work load. I would call the ship building and ship repair business both highly speculative businesses, in which the work load is quite unpredictable.

Q. Assuming a job on which the original work contract would be \$41,655; assuming further that further additional work was ordered in that total sum of roughly \$45,000; assuming further that 9487 man hours went into the extra [224] work, the additional work; and assuming this area, the Puget Sound area; and assuming the time to be the latter part of 1948, the months between August and October; would you consider a profit to the repair yard of \$5987.68 to be a reasonable profit?

Mr. Howard: If I understand this question correctly, if the Court please, he assumes both contract and extra work and totals on that, and then he asks a question as to whether he considers the amount of \$5987 to be a reasonable amount of profit. As I have read Exhibit 12, that is not the fact that is shown by that exhibit. As I read Exhibit 12, there is a total of \$8288 of profit on both contract and extra work, so I think this question which is being propounded to this witness assumes matters that have not been testified to in this case.

I have one further objection to the question as propounded to the witness. This witness has stated that he was experienced in this type of work by

(Testimony of Carl J. Nordstrom.)

reason of having acted as assistant industrial manager in the Thirteenth Naval District in directing ship repair work during the war, but he has not testified that he has continued with his contact with ship repair work so as to be able to state what the fact may be as to conditions existing in 1948.

Mr. White: Your Honor, may I respond?

The Court: You may.

Mr. White: Mr. Howard lodged an objection to the question, which objection was sustained, as to the profit on the entire job. I believe it only fair and proper in my hypothetical question to this expert witness to give the background of the original contract. I am not asking the witness what would be a reasonable profit on the entire contract, but merely on the additional work, considering the original contract price, because that is a factor which should be brought to the attention of the expert witness, in my opinion.

Mr. Howard: I submit to Your Honor that the original contract has no bearing on what profit might be reasonable as to the extra work. The profit on the original contract is separately stated in Exhibit 12, and I think it is taking unfair advantage of the witness and of our principals to call that to his attention and then ask him to express an opinion as to the reasonableness of a profit on the extra work and not bring in the contract.

The Court: In respect to the profits doing the extra work, the Court is not aware of any proof

(Testimony of Carl J. Nordstrom.)

that the amount of such profit was affected by the circumstance that there was an agreed contract originally entered into.

Mr. White: May I establish the fact through this witness, that it would affect the amount of reasonable profit on extra work if there were an original contract?

The Court: I will hear further testimony that you think relates to the subject.

Q. Is there a bearing between the amount of what would be a reasonable profit on additional work, or on a work order—would that bear upon whether there had previously been work ordered in an original contract in a ship repair yard under conditions which I have previously described?

A. If I understand your question correctly, I would say that there wouldn't be any particular bearing as to work that had gone before as to this particular job. The relationship of one to the other is more or less independent.

Q. Reframing my previous hypothetical question to you, merely assuming work ordered of the amount of roughly \$45,000, which work was for the alteration, renewal and repair of a Navy YO; and assuming the conditions as I have described them to you, namely, this area and the period of time, the latter part of August, 1948; and assuming further that 9487 or thereabouts man hours went into the additional work or the work I have described; what percentage of profit [227] would be in your estimate reasonable?

(Testimony of Carl J. Nordstrom.)

Mr. Howard: I object to this question on the ground that the first part of it assumes a figure of \$45,000, and I don't recall that that figure is the total involved in either contract work or the extras.

I further object to the question, renew my objection on the ground that this witness has not stated that he has a continuing knowledge of the overhead figures and reasonable amount of overhead allowance since he left the particular work that he was engaged in during the work, directing ship repair activity in the Thirteenth Naval District.

Mr. White: It would be a very simple matter.

Q. Have you had a continuing knowledge of ship repair work in this area?

A. I have. We are handling that sort of work all the time in our office.

The Court: Were you having that kind of work in August, September, October 1948?

The Witness: Yes, Your Honor.

The Court: The Court sustains the rest of the objection, that relating to the forty-odd thousand dollars, unless it is established by the evidence that that was the amount of the repairs extra over and above the original contract. [228]

Mr. White: Your Honor, according to my computation here, the exact figure is \$45,111.46.

The Court: For what?

Mr. White: On this extra work and spare parts; in other words, the billing outside of the total contract.

(Testimony of Carl J. Nordstrom.)

The Court: What exhibit do you contend reflects that figure?

Mr. White: Exhibits 5 and 6, Your Honor.

The Court: Will you call the page and item to the attention of Mr. Howard? In that connection, I ask Mr. Howard if he has copies of these exhibits?

Mr. Howard: Yes, I do, Your Honor.

The Court: Refer to the page and item where you claim these figures are reflected in these exhibits.

Mr. White: Your Honor, referring to Libelants' Exhibit 6, the last page thereof: without reckoning the sales tax the total appears \$6920.46. Referring to Libelants' Exhibit 4, the last page thereof, the total for what has been denominated additional work is \$38,191. If those two figures on those two exhibits are totalled, we get a sum total, if my arithmetic is correct, of \$45,111.46, which was the figure I was speaking of when I said roughly \$45,000, since it was so close. [229]

Mr. Howard: If the Court please, I will renew my objection on the ground that counsel is now bringing into this hypothetical question the item of spare parts under Exhibit 6 in the sum of \$6920, and that by the very terms of the invoice on spare parts, aside from the fact that he eliminated it from the question, the terms of the invoice show that that figure they are using includes a 10 per cent handling charge.

Mr. White: Your Honor, with respect to Mr. Howard's argument, I believe that the questions

(Testimony of Carl J. Nordstrom.)

which he asked Mr. Harper concerning Libelants' Exhibit 12 were roughly the same as the question which I am asking this witness, and I believe that in his questioning of Mr. Harper he included—he wanted to know outside of the original contract what the profit was. That is all I seek to establish.

The Court: The objection is overruled.

The Witness: May I hear the question again?

(Question read by reporter as follows):

“Q. Reframing my previous hypothetical question to you, merely assuming work ordered of the amount of roughly \$45,000, which work was for the alteration, renewal and repair of a Navy YO; and assuming the conditions as I have described them to you, namely, this area and the period of time, the latter part of [230] August 1948; and assuming further that 9487 or thereabouts man hours went into the additional work or the work I have described; what percentage of profit would be in your estimate reasonable?”)

The Witness: I would estimate 20 to 25 per cent rate of profit on that as being a reasonable profit rate.

Mr. White: Your witness.

Cross-Examination

By Mr. Howard:

Q. Mr. Nordstrom, this allowance per man hour for overhead at a certain time would vary from yard to yard, would it not?

(Testimony of Carl J. Nordstrom.)

A. It would also vary in the same yard from time to time.

Q. I was gong to ask you that next. It would vary from area to area?

A. That is right, vary with conditions.

Q. But in Seattle, in the Puget Sound area, it would vary from yard to yard, wouldn't it?

A. It would also vary in an individual plant in this area, because it is a relation between work load and plant capacity.

Q. Do you have an independent recollection of what [231] conditions were that might affect the overhead figure during the months of August, September, October 1948?

A. I don't think the month of the year has anything to do with it. It is a matter of the work load in the particular plant.

Q. Do you have personal knowledge of the conditions existing as to work load in the Commercial Ship Repair yard at Winslow during the months I have mentioned?

A. I haven't any definite recollection of that.

Q. If there were six ships in the yard, the percentage of overhead carried by any particular job would be much less than if there was only one ship in the yard, wouldn't it?

A. I wouldn't use the term "much," I would say it would probably be less. It depends on the amount of work on it.

Q. During the time you were acting for the Navy Department, is that correct?

(Testimony of Carl J. Nordstrom.)

A. That is right.

Q. During the war, will you tell us whether it was considered appropriate to allow a 20 to 25 per cent profit on a job of the type described in Mr. White's question to you?

A. We handled those matters in an entirely different manner. We had a contract such as no one else could have, [232] a time and material contract based on a standard billing rate in which each yard had a straight figure of so much per man hour, and that was the technical term, a composite billing rate.

Q. That billing rate—can you give us any idea of what allowance for profit was provided for in that?

A. I don't recall just what it was. That was a different situation again in which we had a rather full work load, and all yards going on practically 100 per cent all the time. It wasn't at all comparable to peace time conditions or competitive conditions.

Q. Do you know what the conditions are as far as the awarding of Government work in 1948?

A. I am not handling Government work in that manner.

Q. In the question that Mr. White propounded to you, he assumed that certain work and materials were furnished. Would your answer to that question be varied at all if it was brought to your attention that included in the figure of \$45,000 was an item of \$6921 for spare parts furnished to the

(Testimony of Carl J. Nordstrom.)

vessel by the repair yard upon which the repair yard billed the shipowner a handling charge of 10 per cent, making a total charge exclusive of sales tax of \$6920?

A. I don't think that would make a great deal of difference to me, because the assumption of 20 to 25 per cent profit rate per job is based on the fact that it is [233] a high risk involved operation. Ship repair is a feast today and a famine tomorrow. When you say 20 to 25 per cent profit on a job today, that doesn't mean your annual report is going to show a profit at all. It may mean the difference between survival, remaining in business, and not having earned enough on the work you did.

Q. It is customary, I assume, for yards furnishing spare parts to add a handling charge?

A. The handling charge of 10 per cent is usually added to all items of purchases, store items, whether purchased for spare parts or use in the job, or anything of that sort, for the simple reason that something has to be allowed to the ship yard for the expense of bookkeeping and keeping track of accounts, checking it in and handing out the stores, etc.

Q. That is their overhead item?

A. That is their overhead item, and it is usually chargeable to stores.

Q. I can't quite follow you.

A. That is an overhead item, but it is directly charged to purchases and store items and it not

(Testimony of Carl J. Nordstrom.)

figured in the overhead that is charged against direct labor in the plants I have seen.

Q. In this over-all figure of \$45,000, you were assuming that that was for labor and materials furnished [234] upon which no handling charge was——

A. I was assuming that that was the whole job, the cost of the job. Normally you will take and add to the cost of the job when it is all fixed up a profit item on it, that you are legitimately entitled to, and which normally you have to have if you are going to remain in business.

Q. But the handling charge of 10 per cent is actually an allowance for the yard's overhead, isn't it?

A. It is an overhead item, as a rule.

Q. Going back to the question, the other accounts for extra work, material and labor furnished on extra work over and above the contract, would have a separate charge for overhead, would it not?

A. I don't know. It depends on how they were handled. Very often your extra items are agreed upon. They want to do some extra piece of work, "how much is that worth," and it will be a particular charge, estimate say \$500 to do that. It may cost \$200 and it may cost \$700.

Q. Can you state for us what your recollection is as to the condition of the ship repair business in August, September, October, 1948, in this area as to whether it was stable or unstable? I am re-

(Testimony of Carl J. Nordstrom.)

ferring to those months August, September and October, 1948.

A. My recollection, it wasn't a very stable business [235] in those months. It was on the downgrade. It has been on the downgrade for the last two years. You will find an occasional yard that has a spurt of work. There are yards in Seattle today that have a large amount of work on hand. Other yards are shut down.

Mr. Howard: No further questions.

Mr. White: I believe that is all.

The Court: You may step down.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: Mr. Storrs.

RICHARD C. STORRS

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. Richard C. Storrs.

Q. What is your residence?

A. Seattle, Washington.

Q. And your occupation? [236]

A. Port engineer.

Q. For what company?

A. American Mail Line.

(Testimony of Richard C. Storrs.)

Q. How long have you held that job?

A. Four years and three months.

Q. What is your experience behind that period relating to maritime matters?

A. The 26th day of May of this year, it will be a total of 35 years.

Q. In your capacity as port engineer, what are your duties?

A. Supervision of repair work and negotiating prices with the different ship repair yards, and the preparation of work orders on which bids are submitted.

Q. Do you hold any marine licenses?

A. I have a chief engineer unlimited ocean license.

Q. For how long have you held that license?

A. 23 years.

Q. Do you belong to any professional societies?

A. The Puget Sound Society of Port Engineers.

Q. In your experience as port engineer in negotiating prices with ship repair yards, do you take into account or request a breakdown of time and material on the particular job?

A. I would like to answer that question in my own [237] words and give a direct answer to the question. In my over-all experience as port engineer for the American Mail Line, I feel I am conservative in making the statement that approximately one-third of the total price of any job is conducted on a negotiated price basis, and I do not take into consideration the length of time, the number of

(Testimony of Richard C. Storrs.)

men or the overhead or any other hidden charges in the price which is quoted to me.

I have had enough experience, I hope, that I can size up the job and when the representative of a repair yard tells me that he will do it for \$250, I will agree to that sum of \$250 or I will tell him, "You are way too high and you have got to come down to earth and give me a fair price," which means that in my mind before I have even asked him for a quotation I have in my mind formed a definite opinion of what that work will cost.

Q. Is it customary for surveyors representing owners to negotiate prices?

A. A surveyor representing an owner to negotiate prices, definitely, yes.

Q. You have authority, do you, as port engineer to negotiate prices for American Mail Line on ship repair work?

A. Absolutely, yes.

Q. You have heard the testimony of Mr. Nordstrom with respect to the kind of job that was involved here on [238] extra or additional work, is that correct?

A. I must admit that I heard it, but he didn't speak very loud and I am slightly deaf in my right ear, and I have to admit that I did not follow him very closely.

Q. You are acquainted with the margin of profit that prevails in ship repair work which is of a conversion and alteration character?

Mr. Howard: Objected to as leading.

(Testimony of Richard C. Storrs.)

The Court: Avoid leading. The objection is sustained.

Q. Assuming a contract for the repair, alteration and renewal of an ex-Navy yard oiler; and assuming that this occurred during the month of August 1948 in the Puget Sound area; assuming that that contract contemplated extra work which would be developed as the specifications on the main contract were fulfilled; and assuming that in the course of the repairs and alterations additional work involving a total of 9487 man hours was involved; and assuming further that materials issued in the form of stores totalling \$2547 were involved; and assuming further that direct purchases were made that went into the job totalling \$8536.62; and assuming further that you have a total overhead cost on the extra work amounting to, in terms of hourly rate, \$1.15.7 per hour, or \$10,978 altogether; and assuming further that after the work was completed and after a breakdown of hours, [239] labor and material the total profit amounted to \$5987.68; assuming further that that profit is based upon a total price of \$38,191 for the actual extra work and \$6920.46 for the purchase of spare parts furnished to the vessel; in your opinion, based upon your experience, would you say that the profit here involved is reasonable or unreasonable?

Mr. Howard: If the Court please, I am going to object to this question that has been propounded to the witness on the ground and for the reason that this man has testified that for the last four

(Testimony of Richard C. Storrs.)

years and three months he has been port engineer for the American Mail Line, almost invariably it has been his practice to negotiate work of this type on a price basis by negotiation with the ship yard without requiring or consulting any breakdown of labor and materials.

I state to the Court that this witness has not qualified himself to render any opinion as to the reasonableness of a profit item based upon the factors of cost of labor and the number of hours, labor hours, and the amount of material furnished and the overhead charge that counsel has put in this question, reminding the Court again that this witness has stated that almost invariably they negotiate contracts on a price basis with the yard without requiring such figures.

The Court: The Court will temporarily sustain the [240] objection, with leave to inquire of this witness as to whether he has any experience in determining reasonable profits in these repair bills.

Q. Have you had any experience in this area as port engineer with respect to the negotiation of prices involving a breakdown of time, labor and material?

A. Since May 1 of 1945, I have cataloged and indexed prices for repair work of the different repair yards which are in existence in Seattle at the present time, the Puget Sound area at the present time, and also those which have gone out of business. That is an alphabetical index.

Mr. Howard: I am going to object to so much

(Testimony of Richard C. Storrs.)

of the answer as has so far been given, and move it be stricken as not responsive to the question.

Mr. Hokanson: I believe the witness' answer so far is preliminary as to his qualifications.

The Court: If it is preliminary, it may stand; otherwise, it will be stricken. Try to answer the question directly.

Q. Is it preliminary?

A. It was in this manner preliminary, to the fact that I am here without solicitation and have no personal interest in it.

Mr. Howard: I move that part of the answer be stricken. [241]

The Court: The objection is sustained. The answer of the witness so far made will be stricken and the Court will disregard it.

Have in mind the specific question.

Read the question.

(Last question read by reporter.)

The Court: Answer yes or no.

The Witness: Yes.

Q. Are you now able to answer my previous question involving——

The Court: I think you should ask him if he has had any experience in consideration of what are reasonable margins of profit on these contracts for repair with which he has had dealings.

Q. May the Court's question be answered?

A. My answer to that is no.

Q. Do you know what a reasonable percentage

(Testimony of Richard C. Storrs.)

of profit would be on the type of job that I have described to you earlier?

A. That is an awfully hard question to answer.

Q. Do you have any opinion on it?

A. Yes, I have a definite opinion.

Q. Would you say that 20 per cent was excessive?

Mr. Howard: I object to that as leading.

The Court: Sustained. The witness has not shown [242] qualifications to answer the question.

Q. In your experience in negotiating prices, do you have occasion to break down the job after the price is negotiated to determine what the margin of profit may have been in any particular job?

A. No.

Q. Do you have any personal knowledge of what the margin of profit is to the ship yard in any of the repair work that you negotiate?

Mr. Howard: That is objected to as immaterial and irrelevant on any job he has negotiated, the margin of profit there, unless it is connected in with what we are talking about here. It would have no bearing.

The Court: The objection is overruled. I understand he is trying to qualify the witness.

A. Yes.

Q. Is there any constant on that margin, or does it vary depending upon the nature of the work?

A. I would say that 25 per cent profit on a job——

(Testimony of Richard C. Storrs.)

Mr. Howard: I object to the answer as not being responsive to the question.

The Court: The objection is sustained. I think in view of all the witness' testimony he is not qualified. It seems to me you are wasting your time with this witness. You should be calling another [243] witness.

Mr. Hokanson: I have no further questions.

Mr. Howard: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Hokanson: May I reserve the right to recall this witness in the event rebuttal indicates that his testimony is required?

The Court: Of course the Court will not at this time deprive you of the right to introduce rebuttal testimony that is pertinent, including the recalling of some witness who has already been on the stand.

At this time we will take a recess of ten minutes.

(Recess.)

Mr. Hokanson: Call Mr. Lillehei.

OLE LILLEHEI

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please. [244]

A. Ole Lillehei.

(Testimony of Ole Lillehei.)

Q. Where do you live?

A. Winslow, Washington.

Q. What is your occupation?

A. General superintendent, Commercial Ship Repair, the Seattle division.

Q. Would you describe your background and experience in maritime matters?

A. I served my apprenticeship at Puget Sound Navy Yard, starting the 2nd day of February, 1918, and completed February 2, 1922. I went to sea for a year and a half. I was leading man machinist until 1928. I went back to Bremerton Navy Yard as machinist, and 1929 I was leading man machinist. In 1933, I went to the planning and estimating section, which I stayed until 1938.

In 1938, I was senior planner and estimator in EIM's office, Thirteenth Naval District. From there I went to Winslow Marine Railway in 1940 as machinery superintendent. In 1942, I was assistant general superintendent until 1945. I took the general superintendent's job at Pacific Electrical and Mechanical, for I think it was about a year or a year and a half, and then I went to work at Commercial Ship Repair, which I have been ever since.

The Court: Repeating, for what concern did you work from 1942 to 1945? In what capacity? [245]

The Witness: Assistant general superintendent.

The Court: With what concern?

The Witness: Winslow Marine Railway & Shipbuilding Company, in charge of outfitting.

Q. What does outfitting mean?

(Testimony of Ole Lillehei.)

A. We built minesweepers for the United States Navy. Outfitting is the installation of pipe and electrical machinery and complete outfitting of the vessel, ready for sea.

Q. When did you begin your employment for Commercial Ship Repair?

A. I think it was March 1948.

Q. And what was your capacity for Commercial Ship Repair at the Winslow yard between August 1, 1948 and October 15, 1948?

A. General superintendent.

Q. As general superintendent, what did your duties consist of?

A. Supervise all production in the yard.

Q. Was the *Urania* at the Winslow yard during the period mentioned?

A. Yes, sir.

Q. Did you have supervision of the work done by Commercial Ship Repair on the *Urania*?

A. Yes, sir. [246]

Mr. Hokanson: You may examine.

Mr. Howard: I have no questions.

The Court: You may step down.

(Witness excused.)

Mr. Hokanson: Libelants rest their case in chief, your Honor.

The Court: Respondents may now proceed.

Respondent's Case

Mr. Howard: May it please the Court, at this time I would like to make a very brief statement as to respondent's case.

The Court: You may do so. .

(Opening statement made by counsel for respondent.)

The Court: Call respondent's first witness.

DEMETRI ANTIPPAS

called as a witness by and on behalf of respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard: [247]

Q. Will you state your full name and your residence address?

A. My name is Demetri Antippas, and my residence is New York.

Q. What is your occupation?

A. I am one of the directors of the Compania Naviera Limitada of Panama, and also technical adviser of the company.

Q. That company is the claimant company in this action? A. That is correct.

Q. And who is the president of that company?

A. The president is Mr. Panaghis Antippas.

Q. What relation is he to you?

A. He is my father.

Q. Will you state who the other officers of that company are?

A. The other officers of the company are my brother, Stylinos Antippas, and Mr. Spiros Antippas, my other brother.

(Testimony of Demetri Antippas.)

Q. What positions do they hold with the company?

A. Stylinos Antippas is the secretary-treasurer of the company, and Mr. Spiros Antippas is director in absentia.

Q. How many vessels are operated at the present time by your company? [248]

A. We are operating five vessels at the present time.

Q. Generally, what class of vessels are those?

A. They are classed in the dry cargo category and the tanker category.

Q. How many tankers do you operate?

A. We have one tanker.

Q. And the name of that?

A. The Urania.

Q. Will you state generally what your education has been?

A. I have been graduated from the Athens College in Greece, an American institution. I have a Bachelor of Science degree from the Kings College belonging to Durham University in England, naval architect and marine engineering. I also attended Massachusetts Institute of Technology in Boston as a graduate student.

Q. Did you receive any post graduate degree from Massachusetts Institute of Technology?

A. Master of Science degree.

Q. Will you state when and where the tanker Urania was acquired?

(Testimony of Demetri Antippas.)

A. The tanker *Urania* was purchased in Seattle by us from the Dulien Steel Corporation of Seattle. I believe the deal was concluded on August 4 of 1948.

Q. Will you describe that vessel and its general characteristics? [249]

A. This vessel is a type built by the Navy in large number, I should say. They are classed as yard oilers, and as they were intended for later sale, they were built under American Bureau of Shipping classification and registered as such in the American Bureau of Shipping register.

Q. Can you describe it as to length and breadth and beam?

A. The ship is 165 feet 10 inches over-all length, 32 foot 6 inch beam, and 15 feet depth. The ship draws 13 feet 4 inches of water loaded. She is powered by a Diesel engine, 560 horsepower, built by the Union Diesel Company of Oakland, California.

Q. Was that engine in the ship at the time you acquired it? A. That is correct.

Q. What in general are the cargo-carrying characteristics of this vessel?

A. This ship is classified at this present moment to carry all liquid cargoes, including high octane and such inflammable cargoes, all the way down to molasses or any other liquids derived from the petroleum trade.

Q. How many cargo tanks?

A. The boat has four cargo tanks port and starboard, a total of eight if counted individually. [250]

(Testimony of Demetri Antippas.)

Q. At the time you acquired this vessel and it was placed in operation, will you state the registry of the vessel? Was it an American flag ship or under what flag was the vessel registered?

A. When we purchased the vessel it was purchased in the name of the company, which is a Panamanian company, and therefore registered to the Panamanian register.

Q. How many crew are carried normally on that vessel? A. 17, approximately.

Q. Of that number, how many would be licensed deck officers?

A. There would be the master, who should be a licensed captain, and two deck officers, who should also carry deck officers' licenses. There would be four engineers, all four of whom should carry licenses.

Q. What type of crew was employed for operation of the vessel after you acquired it?

A. We have quite a few men which we have had in the past, men who have been with our company for a great many years, and outside of that we selected the men who would be most suited to the operation of this type vessel.

Mr. Hokanson: I object to the answer as not responsive and self serving.

The Court: The objection is overruled.

Q. Will you state the name of the master of the the [251] vessel after you purchased the vessel in August 1948?

A. My master was Andreas Beis.

(Testimony of Demetri Antippas.)

Q. What nationality is he?

A. He is a Greek.

Q. How long has he been with your company?

A. Captain Beis had been with our company for six years.

Q. In what capacity?

A. In his capacity first as first mate and then as a captain.

Q. Do you recall and can you state how long he had served as master on vessels operated by your company?

A. Approximately two and a half years.

Q. Will you state the name of the chief engineer assigned to the vessel after you acquired it in August 1948?

A. His name was Panaiotis Baxevanis.

Q. What was his nationality? A. Greek.

Q. Where was the vessel located at the time you acquired it?

A. The vessel was located at the Foss Mooring, at the Foss Tug & Launch Company Moorings.

Q. What action was taken by you at that time with respect to placing the vessel in service?

A. This vessel was designed by Sparkman & Stevens [252] of New York, and I had acquired a set of specifications from them which covered both the repair work required to make the vessel capable of carrying commercial cargoes, and also the lengthening of the vessel in order to make her larger if the owner so required. After acquiring such speci-

(Testimony of Demetri Antippas.)

fications accompanied with drawings, blueprints of this conversion, I came to Seattle and selected the items from this initial set of specifications which would be required at that time outside of lengthening the vessel.

Q. When did you come to Seattle for that purpose?

A. I came to Seattle on August 2, and I proceeded with this operation on August 4.

Q. What, if any, other representatives of your company came to Seattle or were present in Seattle at that time?

A. Mr. Harry F. Williams, who is employed by us on certain occasions as a port engineer.

Q. Was any other representative of your company present in Seattle at that time?

A. The captain of the ship was here, as well as the chief engineer.

Q. And those are the men whom you previously identified?

A. That is correct. [253]

(Specifications 837 marked Respondent's Exhibit A-4 for Identification.)

Q. Will you state what experience, if any, you have had at sea on vessels?

A. I have been at sea for approximately six years, part of which was during my Navy service after being graduated from the Midshipman's Reserve School in New York as engineering officer for the Navy.

Q. That is the United States Navy?

(Testimony of Demetri Antippas.)

A. That is correct.

Q. What year would that be?

A. It was in 1942 at the Midshipman's Reserve School in New York.

Q. After you had been graduated from that school, what experience did you have at sea?

A. I was constantly at sea until 1945.

Q. Serving in what capacity?

A. Serving as engineering officer on destroyers or destroyer escorts, and also about eight months on a repair ship.

Q. Prior to that period of service in the Navy, had you had any previous experience at sea?

A. Yes, I had gone to sea quite often on ships owned by our company.

Q. As a passenger or as a crew member? [254]

A. I shipped out first as deck boy and then worked myself around to various other positions on the vessel in order to acquire experience and know how everything works.

Q. Handing you what has been marked for identification as Respondent's Exhibit A-4, can you identify that?

A. Yes. That is the set of specifications which along with the blueprints were handed to me by Sparkman & Stevens in order to accomplish the repair of this vessel.

Q. Were those specifications considered by you at the time you came to Seattle in the first part of August 1948 in connection with the tanker Urania?

(Testimony of Demetri Antippas.)

A. These specifications as a whole were considered by me as excellent. Of course, I wasn't prepared to do the lengthening of the vessel at the time I came here. I was only interested in refitting the vessel for sea, and therefore I selected out of this set of specifications such items as I considered necessary, and, of course, in accordance with the American Bureau of Shipping rules for the refitting of the vessel.

Q. Then those specifications that you have there include lengthening of the vessel?

A. That is correct. Most of the items, I should say, would refer to the lengthening of the vessel.

Q. Has that lengthening of the vessel been accomplished in the tanker *Urania*? [255]

A. Not to this present day.

Q. What action did you take to accomplish any repair or alteration on the tanker *Urania* after you arrived in Seattle in the first week of August 1948?

A. I contacted our agents here who represent our New York agents. The New York agents in Seattle are General Steamship Company, Ltd., and I asked for—I had several copies of these specifications and told them that I would like to have certain yards come on board the vessel, representatives of some yards, and go with me over the work I expected to be done, and of course, I would hand over a set of specifications and a set of blueprints, and from there I would expect an offer on a bid form to be supplied.

(Testimony of Demetri Antippas.)

Q. In requesting such bids, did you indicate what portions of those specifications the contractors were to bid on?

A. That is correct. All such copies which were handed to the various yards bear my own handwriting and my own markings as to which items are supposed to be done and which are supposed to be left out.

Q. Did you in fact receive bids as solicited?

A. I did.

Q. How many?

A. I received three bids; one from Todd Ship Yard, one from the Puget Sound Dredging Company, I believe that [256] is the full name, and one from the Commercial Ship Repair.

Q. About what time were those bids received by you, if you recall?

A. If I recall, they were received by me around three o'clock in the afternoon of August 5.

Q. Will you state please whether or not the bid of Commercial Ship Repair was the low bid received by you?

A. It was not the lowest bid. It was the next to the lowest bid.

Q. Do you recall what difference in price there was between the low bid and the bid of Commercial Ship Repair?

A. I believe it was around \$780.

Q. Do you recall what the amount of the bid of Commercial Ship Repair was?

(Testimony of Demetri Antippas.)

A. I couldn't remember offhand. If my memory serves me right, it was \$39,780. I should have to look at the bid form.

Q. Handing you what has been identified as Respondent's Exhibit A-1, can you identify that document?

A. Yes. That is the offer I received from the Commercial Ship Repair upon opening the bids at that time, and it does have the amount of \$39,780 as cost of such repairs, and 18 working days as time for completion.

Q. What was done with respect to the awarding of a contract for the necessary work on the tanker *Urania* after [257] these bids were opened?

A. It is a fact that out at this coast I did not have personal knowledge of yards, and I had to select the yard partly on the bid offered, on the amount of the bid offered, and partly on what I heard or what I could collect as to information about that yard.

Q. What did you do with respect to awarding any contract or arranging for the work to be performed on the tanker *Urania*?

A. I called Commercial Ship Repair, or rather, I told Mr. Sweetin, if I am not mistaken, that I believed there was a way of offering the contract to them if I could get more information on the price bid.

Q. What prompted you to call Commercial Ship Repair when they were not the lowest bidder?

(Testimony of Demetri Antippas.)

A. That was something else again. It happened the first time I came out here to inspect the vessel—that was before we purchased the vessel—we were pretty well fixed on the fact that we were going to buy it and Mr. Williams was with me at the time in Seattle. We received a call at our hotel from Mr. Copeland. Of course, I did not know Mr. Copeland personally, but I have heard of him and Mr. Williams knew of him quite well, with the result that at the time before we had decided to do anything with the vessel, we had already in mind that Mr. Copeland, who was [258] with Commercial Ship Repair at the time, was a dependable man.

Mr. Hokanson: If Your Honor please, I move that the last part of the witness' answer be stricken on the ground that it is hearsay.

The Court: Objection and motion overruled and denied.

Q. Do you know in what capacity Mr. Copeland had been employed by Commercial Ship Repair?

A. I believe he was the yard manager.

Q. Was that at the Winslow yard?

A. That is correct.

Q. What if any action was taken by you with respect to arranging for the performance of this work by the Commercial Ship Repair yard?

A. As I said before, I went to their office. I called them up and went to the office and asked for a breakdown of the items on the specifications which we had for the bid, which I examined very care-

(Testimony of Demetri Antippas.)

fully, and I also had another list of various things which were not clearly indicated as being included in the original bid, and which I wanted understood that they would be so.

Q. Who was with you at the time?

A. Mr. Harry Williams was with me at the time.

Q. Who was present representing Commercial Ship Repair? [259]

A. I remember that Mr. Black was there, and Mr. Sweetin, and I believe Mr. Finn.

Q. What discussion did you have at that time concerning the proposed work to be performed on the tanker *Urania*?

A. I made a notation on the back of one of these copies which had a list of certain things, certain details which were not clearly indicated in this specification form. Of course, I also added three items which were in excess of the figure offered to me at the time. If I remember rightly, those items were bitts to be installed on the forecastle, the freeing-up of the engine room skylight, and making of a chartroom on the after end of the wheelhouse.

Q. Then what did you do?

A. Then I arranged with Mr. Black to insert the new figure in the letter which they had offered me.

Q. Referring now to what?

A. Exhibit A-1.

Q. Referring to Exhibit A-1, is that figure shown in there?

(Testimony of Demetri Antippas.)

A. Part of the figure is shown in there, because the chartroom — there was some question as to whether it was practical to do it on account of the mast which was in the way, and a further check should be effected. As I was leaving for New York, I asked Mr. Williams to find out if [260] such a construction would be practical, and of course the price was agreed upon by Mr. Black and myself before I left.

Q. And that is the price shown on Respondent's Exhibit A-1 for those items, with the exception of the chartroom? A. That is correct.

Q. How much was allowed for the chartroom?

A. \$1500.

Q. What authority did Mr. Williams have to act for you at that time?

A. Mr. Williams had the same authority that he has had at various other times. It is a practice to take Mr. Williams out on certain jobs that we cannot be present at ourselves, and leave Mr. Williams in charge as to supervising the carrying out of the work.

Mr. Hokanson: I am going to object to the answer of this witness at this time on the ground that he is talking about what their practice is with Mr. Williams. We have here under consideration what happened on this specific occasion.

Moreover, I object to it on the ground that it is entirely self-serving, and that the best evidence of

(Testimony of Demetri Antippas.)

what that authority is is not what was contained within the mind of Mr. Antippas, but what was said to the parties at the time. [261]

The Court: The objection is overruled.

A. To make things clear, at that time Mr. Williams had the same authority he has had at other times. It is very clearly understood and Mr. Williams knows it, because it is the instructions he receives from us, that he is authorized to supervise the work, to order any other such work which he might deem necessary, but of course, if such an additional item is of great—if it is large in amount, he should first consult with the office as to the performance of such an item.

Mr. Hokanson: Same objection, Your Honor. I move the answer be stricken on the same ground.

The Court: Overruled and denied.

Q. As to the particular work that was to be undertaken on the tanker *Urania*, was there any other written contract arranged with the Commercial Ship Repair yard other than contained in the form of the bid shown as Respondent's Exhibit A-1, and the specifications as shown in Libelants' Exhibit 1? Do you have those before you now?

A. Yes, I do. This letter was the only contract form that we had from Commercial Ship Repair, and this set of specifications, with the exception of page 7, which was prepared after I left.

Q. What if anything did you state to the repre-

(Testimony of Demetri Antippas.)

representatives of Commercial Ship Repair at this meeting last referred [262] to as to the extent of the authority of Mr. Williams to act for you or your company on the performance of the job in connection with the tanker *Urania*?

Mr. Hokanson: Same objection.

The Court: Overruled.

A. I stated that Mr. Williams' authority would be in supervising work and ordering other such work which he considered necessary; and, in general, protecting the interests of the owner in carrying out this repair work.

Q. At any time during the progress of the work, did you advise representatives of Commercial Ship Repair that Mr. Williams had authority to approve the amounts for any extra items charged?

A. I did not.

Q. Have you had on any prior occasions experience with similar work being performed in other shipyards, similar work to what was performed on the tanker *Urania*?

A. Yes, I have had other such work performed on other ships, even to a greater length, as a matter of fact.

Q. What has been your experience as to the practice of such yards with respect to requiring any payments in advance of the completion of the work?

Mr. Hokanson: I object to that, Your Honor.

The Court: Sustained.

Q. Was there any provision in your contract

(Testimony of Demetri Antipapas.)

with [263] Commercial Ship Repair for progress payments on the work to be performed on the tanker *Urania*?

A. Not at any time, and as a matter of fact, if such a demand would have been made, I would have refused flatly and probably taken the work some place else.

Mr. Hokanson: I move the last part of his answer be stricken as not responsive.

The Court: The objection is overruled.

Q. How long did you remain in Seattle after you had this conference with representatives of Commercial Ship Repair on the 4th or 5th of August?

A. I left the same night and returned to New York.

Q. Did you return at any subsequent date to Seattle during the time that repairs were being made?

A. Yes, I returned on September 4, and that was about the length of time—it would cover the length of time mentioned in that bid offer of 18 working days. I wanted to see how far the work had progressed.

Q. What did you observe as to the progress of the work at that time?

A. I would say that the contract work was not half finished.

Q. How long did you stay in Seattle or at Winslow on that occasion?

(Testimony of Demetri Antippas.)

A. I am not certain. I believe it was two days.

Q. During that period from August 5 to your return to Seattle on September 4, had any additional work been ordered to be performed on the tanker Urania, to your knowledge?

A. I believe so, yes.

The Court: You do believe it had, is that correct?

The Witness: That is correct.

Q. Do you know who had ordered or requested that work to be performed?

A. Mr. Williams. He had informed me by telephone of certain items he had ordered, because he always believed in keeping me informed as to how he was going to spend my money.

Mr. Hokanson: I move the last part of his answer be stricken as not responsive.

The Court: That will be done. Do not make any voluntary statements.

Q. Had you during that period of time been in contact with your agents at Seattle? A. Yes.

Q. What if any activity had they been participating in in connection with the tanker Urania?

A. Our agents in Seattle, as anywhere else, are the people who disburse money for the account of the owners in connection with any expenses that may arise by virtue of the [265] ship being in a yard or dock or anywhere.

Q. Did the General Steamship Corporation at Seattle participate in any way in the negotiations

(Testimony of Demetri Antippas.)

or in the awarding of the contract for the repair work on the tanker *Urania* to the Commercial Ship Repair yard?

A. Not other than to the extent that at my request they called several yards to come on board, and I used their office to open the bids.

Q. Did you return to Seattle on any other occasion than you have previously mentioned?

A. I did not.

Q. Did you have any conversation with any representatives of the Commercial Ship Repair yard at the time you were in Seattle around the 4th of September, 1948?

A. It is quite possible I did when I went on the ship. I saw quite a few people around, and I inquired as to the progress of the work and what was being done in certain items.

Q. Did you discuss with any representative of Commercial Ship Repair yard on that occasion the matter of making any progress payments on account?

A. No, not directly.

Q. Did you have any discussion with Mr. Williams concerning this matter?

A. Mr. Williams told me that he was approached by— [266] I don't remember whether it was Mr. Featherstone or Mr. Harper—and he mentioned the fact that they were rather low in funds at the time and would appreciate a payment on my part.

Mr. Hokanson: I object to the answer as involving a hearsay statement, if the Court please.

(Testimony of Demetri Antippas.)

The witness' testimony is based upon what Mr. Williams said to him as to what a third person had said. It involves a double hearsay. If it were a direct statement by Mr. Harper or Mr. Featherstone, it would be an admission against interest on the part of the libelants, but here he is relating what Mr. Williams said Mr. Featherstone or Mr. Harper said, and it is therefore a hearsay statement.

Mr. Howard: I recognize that is true, Your Honor.

The Court: The objection is sustained.

Q. What, if any, action was taken by you or your company with respect to progress payments to the Commercial Ship Repair yard on the Urania job?

A. We had no obligation to make any such payment, and we did not make one until such a request was made.

Q. You received such a request from whom?

A. I received it from Mr. Williams.

Q. And that was about what time?

A. It was just before I left in the afternoon of September 4 from the yard. As a matter of fact, I was in a hurry to reach the ferry.

Q. Handing you what has been identified as Respondent's Exhibit A-2, can you identify that?

A. Yes.

Q. Will you state what that represents?

A. That represents a receipt on the payment which we made during the course of repairs, and

(Testimony of Demetri Antippas.)

the amount was \$25,000.

Q. Was that invoice, or the original of that invoice A-2, received by you prior to the time that the payment was made? A. No.

Q. Did you receive it after the payment was made? A. I think so, yes.

Q. Prior to the date of that invoice—what is the date of that, by the way? A. October 4, 1948.

Q. Had you received any other invoice from the Commercial Ship Repair yard covering any matter charged to the tanker Urania?

A. No, we did not.

Q. You have heard the statements made by several witnesses on libelants' case in chief as to another invoice having been mailed to your company at 52 Broadway, [268] New York, c/o Simpson, Spence & Young, for the sum of \$30,000 representing a first progress payment. Will you state whether such an invoice was received by your company? A. It was not received.

Q. Handing you Libelants' Exhibit 2, I will ask you whether you have ever seen that invoice prior to your arrival in Seattle for the trial of this cause?

A. No, I have never seen this document before.

Q. Do you know whether that invoice was actually received in your company's office in New York?

A. It was not received.

Q. Did you have any understanding or agreement with representatives of Commercial Ship Repair extending the time for the completion of the

(Testimony of Demetri Antippas.)

contract work as set forth in Respondent's Exhibit A-1?

Mr. Hokanson: I object to the form of the question as leading.

Mr. Howard: I have asked him if he had any agreement.

The Court: The objection is overruled.

Mr. Hokanson: May I inquire at this time as to the order of proof here? Mr. Howard apparently is going into a matter which involves his cross libel.

The Court: It is agreeable to the Court. It is not easy for the Court to determine at the moment testimony [269] is offered whether it is upon the general denial or upon the cross libel, and I prefer not to be confronted with that problem in connection with each question.

Mr. Howard: I will try to confine my examination to the matters involved in the libel, Your Honor.

The Court: The objection is overruled. Answer the question.

A. When I read this letter and we agreed on the work to be done and everything was signed, sealed and delivered, I had an understanding with Mr. Black that they were to undertake the work. I mentioned the fact that I would not be too strict on the 18 days mentioned in there, because I believed that—at least, I thought at the time that if I were to insist on that date, it would probably mean a rush towards the end of it, and probably not too good

(Testimony of Demetri Antipapas.)

quality of work, and I therefore mentioned I would be willing to overlook a few days more.

Q. Did you have knowledge of the extent of the additional work being performed on the tanker *Urania* over and above those items covered by your contract represented by Libelants' Exhibit 1 and Respondent's Exhibit A-1 prior to October 15, 1948?

A. I knew that additional items were being performed, and I was only aware of the larger items as I was informed [270] by Mr. Williams of such larger items being performed. Of course, the smaller items were to the discretion of Mr. Williams.

Q. What arrangement, if any, did you have with Mr. Williams with respect to the approval of those invoices?

A. Mr. Williams was supposed to——

Mr. Hokanson: I object to that, Your Honor.

The Court: The objection is overruled.

A. Mr. Williams was under obligation to us to collect the bills, to check the contents to see that the work mentioned in the bills was performed properly, and, of course, to present it to us and assist us in the determination whether the price was correct or too high.

Q. Did you return to Seattle prior to October 15, 1948? A. I did not.

Q. When did you next see Mr. Harry Williams after your visit to Seattle on September 4?

A. I saw Mr. Williams in New York on Satur-

(Testimony of Demetri Antippas.)

day, October 9.

Q. Where were you at that time?

A. In a restaurant.

Q. Who did you have with you at that time?

A. My family.

Q. Who was with Mr. Williams? [271]

A. His own family.

Q. Did you have any discussion with Mr. Williams at that time concerning the work that had been performed and the invoices that had been presented on the tanker Urania? A. No.

Q. What if any arrangements did you make to meet subsequently with Mr. Williams?

A. I told Mr. Williams I would expect to see him in my office Monday of the next week.

Q. Did you meet Mr. Williams in the office?

A. I did not.

Q. What was the reason?

A. I had to leave for Washington unexpectedly for that day.

Q. What was that date, please?

A. That was Monday, October 11.

Q. When did you return from Washington?

A. I returned late that night.

Q. Did you see Mr. Williams on Tuesday, October 12? A. No, I did not.

Q. Why not?

A. Tuesday was a holiday, Columbus Day, and everything was shut down.

Q. Up to that time, had you received any notifi-

(Testimony of Demetri Antippas.)

Q. Any communication from the Commercial Ship Repair [272] yard concerning any of the invoices that had been presented on the tanker Urania? A. None whatsoever.

Q. Did you see Mr. Williams on Wednesday, October 13? A. No.

Q. Why not?

A. I believe Mr. Williams was out of town.

Q. Did you receive any communication from the Commercial Ship Repair yard concerning the invoices and the tanker Urania on October 13?

A. None.

Q. When did you next see Mr. Williams?

A. I saw Mr. Williams at noon on the 14th, that is right, noon of October 14.

Q. Handing you Respondent's Exhibit A-3, do you recognize that document? A. Yes, I do.

Q. What is it, please?

A. It is a cable from the Commercial Ship Repair yard signed by Mr. J. J. Featherstone, co-owner, informing us that the vessel was being libeled to insure payment of their invoices totalling \$89,000, etc., etc.

Q. When you refer to a cable, that is the same as we have spoken of as a telegram?

A. That is right. [273]

Q. When did you receive that telegram?

A. We received this telegram on the morning of October 14.

Q. Up to that time, had you received any notice

(Testimony of Demetri Antippas.)

from the General Steamship Company at Seattle of any action pending or threatened against the tanker Urania?

A. We had received no notice.

Q. Up to the morning of October 14?

A. Up to that morning.

Q. How did you first learn that the tanker Urania had been arrested under a process libel in rem?

A. Upon reading this cable.

Q. Did you at any time up to October 14 reach any agreement with representatives of Commercial Ship Repair as to the amounts to be charged for the extra items over and above the contract amount you have referred to?

A. I did not.

Q. Did you receive any report from Mr. Williams that he had agreed to any?

A. I did not.

Q. Did you at any time up to October 14 receive from the Commercial Ship Repair any statement of the amount of labor or material being furnished on the extra work being performed on the tanker Urania?

Mr. Hokanson: I object to that on the ground [274] there is no showing in the pleadings or evidence here that there was ever any understanding or arrangement for time and material showing on this job, that same objection as I have heretofore made.

The Court: The objection is overruled.

A. I did not receive anything.

Q. Of the ships that are operated by your com-

(Testimony of Demetri Antippas.)

pany, how many of those ships were in operation in the fall of 1948? A. All of them.

Q. Five ships? A. That is correct.

Q. Including the Urania?

A. That is correct.

Q. In what type of service are those ships operated?

A. In all sorts of trans-Atlantic or coastal voyages as we may find, carrying various cargoes.

Q. Where are voyage repairs on those ships performed?

A. Mostly on the East Coast, at various yards depending on where the vessel goes in.

Mr. Hokanson: I object to this line of questioning as being irrelevant, not related to the issue here.

The Court: What is the purpose of it?

Mr. Howard: If the Court please, I am proposing to interrogate this witness further as to his knowledge [275] of any custom or usage in the steamship operation and ship repair business as to the manner in which contracts for voyage repairs or repairs of the nature of this are negotiated with a ship yard.

The Court: Should not that be confined to Puget Sound?

Mr. Howard: We might have a local custom here, but it seems to me the custom in this country would have some bearing on the question, unless it was shown that there was a different custom locally on Puget Sound.

(Testimony of Demetri Antippas.)

The Court: Is there any objection?

Mr. Hokanson: If the Court please, it is my understanding that custom, if that is to be injected as an issue in the case, should properly be pleaded. As I understand the admiralty rules, considerably more latitude is given in matters of evidence, and if counsel is to be allowed to develop the matter of custom with respect to payment arrangements in the shipping industry, I would ask the same privilege of the Court by way of rebuttal.

Mr. Howard: I was going to respond that counsel would have that opportunity in rebuttal, in any event.

The Court: The objection is sustained.

Q. Handing you Libelants' Exhibit 12, will you state [276] whether that document has been examined by you prior to this date?

A. No, it had not.

Q. Were you acquainted with the figures and the breakdown for labor, stores and purchases and overhead charged or claimed to have been charged to the tanker *Urania* repairs? A. I am not.

Q. State what your experience has been as to whether such a breakdown is furnished on work being performed of the nature that had been performed on the tanker *Urania*?

Mr. Hokanson: I object to that as not involving an issue in this case. His experience in relation to other conversion jobs has no bearing upon what the arrangements were in this case. He might have

(Testimony of Demetri Antippas.)

had negotiations in many cases where he demanded it or where it was furnished, but that is not the issue in this case.

The Court: Sustained.

Mr. Howard: You may cross-examine.

Cross-Examination

By Mr. Hokanson:

Q. What kind of a company is the Dulien Steel Company? [277]

Mr. Howard: Objected to as immaterial and irrelevant.

The Court: It will have to be more specific than that. The objection is sustained.

Q. You purchased the Urania from the Dulien Steel Company? A. That is correct.

Q. Isn't that a junk company?

A. I don't know.

Q. How much did you pay for the YO 73?

Mr. Howard: I object to that as certainly not within the issues in this case.

The Court: What issue does that have a tendency to prove or disprove?

Mr. Hokanson: If Your Honor please, I want to establish here that the repairs and alterations to this vessel were very extensive, involved a conversion job, and there were difficulties encountered which necessitated considerable work. I think the Court should be interested in knowing——

The Court: The objection to the question is sustained. You might be able by appropriate questions

(Testimony of Demetri Antippas.)

to obtain that information, but I think the objection should be sustained.

Q. Do you know the history of the YO 73? [278]

A. To some extent.

Q. Where was it before it was at the Foss Mooring? A. I believe in Alaska.

Q. For how long a period?

A. I don't know.

Q. Was it a laid-up vessel in Alaska?

Mr. Howard: If you know.

A. I don't know.

Q. Did you inquire into the history of the vessel before you purchased it? A. No. I did not.

Q. Weren't you concerned with its condition?

A. I was concerned with what I could see.

Q. You have referred to the crew of this vessel in respect to what licenses they should hold. Is Mr. Beis now in your employ? A. Yes, he is.

Q. What is his present rating?

A. He is the captain of the steamer Perla.

Q. When did he leave the Urania?

A. About the time his deposition was taken in New York.

Q. Had he been reduced in rating at any time subsequent to his leaving the Urania? A. No.

Q. He has never been reduced to a mate status?

A. Not to my knowledge.

Q. Who is the chief engineer of the Urania at the present time? A. Mr. Jacobson.

Q. Are any of the other engineers who were

(Testimony of Demetri Antippas.)

aboard the *Urania* when she left Seattle still aboard her?

A. They are.

Q. Who are they?

Mr. Howard: I am going to object to this line of questioning as not proper cross-examination; and further, that it is not indicated that it is within any of the issues of this case as to who is on the vessel at this time.

The Court: The identity and connection with the vessel as to Captain Beis was inquired into.

Mr. Howard: I am not objecting to that, Your Honor, but as to personnel presently on the vessel, and the new chief engineer. I object to the examination as to its crew members.

The Court: What is the purpose of it?

Mr. Hokanson: It may be relevant as bearing upon a certain breakdown that this vessel allegedly suffered.

The Court: This cross-examination is confined in [280] scope to the scope of the direct examination.

Mr. Hokanson: Very well, Your Honor. I will develop that later.

Q. The bid which Mr. Black made to you was based upon Libelants' Exhibit 1, which you have before you, was it not?

A. It was based on the specifications I gave them, from where this document was drafted.

Q. But those specifications were made up by referring to the Sparkman & Stevens specifications, were they not?

(Testimony of Demetri Antippas.)

A. They were not exactly made up. They were copied from the specifications of Sparkman & Stevens, with some references so as not to copy the whole item in the Sparkman & Stevens specifications. They refer to some items in here, for instance, "furnish and install oil piping in accordance with contract plan," "install rotary pump section S 47 of conversion specifications," and other such items as are in this document.

Q. In other words, where reference is made to a specific item, it was merely for reference purposes so they would know what plans were involved?

A. Not for reference purposes, for description purposes so as not to copy the whole extent of the specification. Some of the description of the item is [281] quite lengthy.

Q. That was the sole purpose of referring to certain specific items of Sparkman & Stevens specifications?

A. I wouldn't say the sole—I don't quite understand your question.

Q. What was your understanding as to the obligation of Commercial Ship Repair with respect to the items in the main contract?

A. Their obligation was to perform the work in accordance with my markings on the Sparkman & Stevens specifications, which I turned over to Mr. Sweetin and accompanied with the plans. This was made out so as not to confuse anybody with the rest of the items which were mentioned in this document made up by Sparkman & Stevens.

(Testimony of Demetri Antippas.)

Q. You stated in your testimony that with respect to large items, or items expensive in amount, it was Mr. Williams' obligation to consult with you concerning the price thereof, but in smaller amounts he had his discretion, is that right?

A. I did not say the price. I said the performance of the work, that is, whether the work was to be performed or not.

Q. He had the authority to order additional work? What was the limitation upon that authority?

A. The limitation was on that authority, if he wanted to have a small amount which would cost anywhere—without mentioning prices, which would be a small amount insofar as putting in a bolt or nut or renewing a pipe length, but if it were something like constructing a housing or performing some work which would be of larger extent, Mr. Williams would always consult with me before he would do so.

Q. With respect to the small items, did he have authority to obligate you for the payment of them?

A. Not necessarily.

Q. What do you mean, not necessarily?

A. I mean he would have to show me all of the accounts before any of them would be paid.

Q. But he did have authority to commit the vessel to that work?

A. He had the authority to commit the vessel to that work, and only——

(Testimony of Demetri Antippas.)

Q. In other words, there was no question about Mr. Williams' right to order all this additional work in your behalf? · A. No.

Q. But nevertheless, he had no authority to commit you to the price of that work?

A. That is correct.

Q. So that if after the job was completed you were not [283] satisfied with the price established, you could arbitrarily dispute it?

A. Not arbitrarily. I would require a breakdown to see how the yard would justify a large amount on an item which I would dispute.

Q. How did that understanding with respect to the extent of Mr. Williams' authority come about?

A. I don't understand your question.

Q. Is that just an inferred understanding that you had between yourself and Mr. Williams?

A. No. It is a very clear understanding which was carried out every time I employed Mr. Williams.

Q. I have reference to the time you employed him for the Urania.

A. The same understanding was the understanding at this time.

Q. How was the understanding communicated?

A. By mouth.

Q. When did you communicate that understanding with Mr. Williams?

A. Before I came out with Mr. Williams to Seattle.

(Testimony of Demetri Antippas.)

Q. On what date?

A. I don't recall the exact date we did it, but it was before we arrived here.

Q. Where was it? [284]

A. He was with me.

Q. Do you recall where it was?

A. It might have been in my office, it might have been in Simpson, Spence & Young's office, it might have been in the plane when we were coming over.

Q. But you just discussed it with him on some occasion?

A. Not discussed it. It is a very clear ruling which we have between Mr. Williams and myself.

Q. Did Mr. Williams discuss it with you, or did you just pass it along to him?

A. I have told him about it. He agreed to it and he carried it out at all times.

Q. This understanding obtained on other jobs prior to the *Urania*?

A. It was obtained every time Mr. Williams was going out on a job for me.

Q. So that you have found it necessary to renew that understanding every time he undertook a job, is that correct?

A. Not necessarily. It is just a matter of form and of proper operations to make clear to Mr. Williams or who it may be who will work for me what I expect of them.

Q. Did you ever have any misunderstanding with Mr. Williams before?

(Testimony of Demetri Antippas.)

A. I never had any before or now. [285]

Q. But the fact is that every time he undertook a job for you, you had to repeat your instructions as to the limitation of his authority?

A. I would give him instructions as to the whole work, which of course would include what I expected of Mr. Williams. In some cases where it might have been something very small, I might have said, "Let me know what the story is," or something like that.

Q. Did you and Mr. Williams come out here together?

A. We did the first time we came out.

Q. When was that?

A. When we inspected the vessel.

Q. Do you remember the date?

A. I am afraid I don't.

Q. Was it in August?

A. I don't think so. I think it was before August.

Q. So that if you had this discussion with him concerning his authority on the plane, it must have been prior to August 1948?

A. I didn't say I held that discussion with Mr. Williams in the plane. I said I don't remember when. It might have been in my office, it might have been in his office. I don't remember any exact date or exact location.

Q. Did you communicate the limitation of his authority to Mr. Black? [286]

(Testimony of Demetri Antippas.)

A. I told Mr. Black Mr. Williams was my representative as far as the supervision of the work and the ordering of items. That means the orders for items would come from Mr. Williams and not from the chief engineer or the captain.

Q. But you did say that he was your representative?

A. He represented me insofar as I had made out the specifications and accepted the contracts and decided on who was going to get the job, so I had to turn over my authority to supervise the work to somebody else.

Q. The original specifications contemplated considerable additional work, did they not?

A. Not necessarily, it couldn't be determined at the time.

Mr. Howard: I am not sure which specifications you are referring to.

Q. The specifications which are identified as Libelants' Exhibit 1. Didn't those contemplate additional work? A. Some.

Q. And you came out here only once on September 4 and were here for about two days?

A. That is correct.

Q. How much additional work had been done on the vessel at that time?

A. Well, not even the original work was completed at [287] the time.

Q. But additional work had been done outside the main specifications, had it not?

(Testimony of Demetri Antippas.)

A. I don't exactly recall how much, but it couldn't have been much.

Q. Did you ever tell Mr. Black or Mr. Featherstone or any representative of Commercial Ship Repair that your arrangement with Mr. Williams was such that he had discretion in small matters to order the work, but not with respect to large matters?

A. I did not, because Mr. Williams was supposed to ask me before he would order something of large nature. Then, of course, after asking me and getting my permission in ordering larger construction, he would go ahead and transmit that to the representative of the yard.

Q. Did you tell Mr. Black or Mr. Featherstone it was required of Mr. Williams that he first contact you and obtain your authority before proceeding?

A. I trusted Mr. Williams implicitly in that matter, that he wouldn't overstep his authority with me.

Q. Concerning additional items that you agreed upon with Mr. Black that are listed, I believe, on Libelants' Exhibit 1 as items 47 and 48, were those items——

A. Would you repeat the number of the items, please?

Q. 48, 49 and 50. Did you negotiate the price of [288] those items with Mr. Black?

A. I did.

Q. Did you ask him for a time and material breakdown on them?

(Testimony of Demetri Antippas.)

A. I asked him to give me a description of the larger item of the chartroom, which he proceeded to do, to show how much steel was going to go on, how much it would cost for the labor.

Q. And you agreed with him what the amount should be? A. I did.

Q. During the course of this work, Mr. Williams went to California, didn't he?

A. He did.

Q. He purchased major items for the main engine of the vessel?

A. He did not purchase major items. I had purchased the items myself from New York, and Mr. Williams went out there to try to expedite dispatch of such items so as not to hold up the vessel.

Q. He didn't go down there to buy the items, but merely to see if he could get delivery speeded up?

A. I think there were some small items which were mentioned to me on the telephone before he went out there and which I had given him permission to order, but the bulk of the order was already done. [289]

Q. Were you kept apprised by Mr. Williams of all the extra work that was being done on this vessel? A. Most of it.

Q. How often were you in communication with him?

A. I don't know, quite often by telephone.

Q. So that you knew considerable additional work was being added to the vessel, didn't you?

(Testimony of Demetri Antippas.)

A. The term "considerable" might have been interpreted by me differently. You may say it is considerable, I may say it is not.

Q. Did you ever make any comment to Mr. Black or Mr. Featherstone when you were here in September concerning the progress of the work?

A. As far as they had progressed, it looked to me that it was probably going to turn out all right. I couldn't tell, it was still too early to express a reasonably sound opinion as to what the quality of the work was going to be. At the time, there weren't even any apparent signs of how the work was going to be completed.

The Court: What date was that?

The Witness: September 4, Your Honor, of 1948.

Q. The work had been going on for about a month at that time, hadn't it?

A. Approximately.

Q. You were reasonably well satisfied at that time, [290] were you not?

A. I couldn't commit myself and say that I had absolutely no objections to it or any remarks. I couldn't in all fairness both to the Commercial Ship Repair and to myself. There wasn't enough of it to tell.

Q. As a matter of fact, you did communicate your satisfaction with the job to Mr. Black, didn't you?

A. I encouraged Mr. Black to do the best he could.

(Testimony of Demetri Antippas.)

Q. When did you do that?

A. I was leaving the yard and trying to catch the ferry, and Mr. Black was coming in with the ferry. I was running at the time, I probably didn't even stop, I just ran through.

Q. You ran by him? A. Just about.

Q. What did you say on the way?

A. I said "Everything looks all right," or something of the kind. I wouldn't remember the exact words. It was something trivial.

Q. That was the extent of your meeting with him?

A. I think there was another gentleman who belongs to the organization who sold me the vessel with him. I probably said hello to him. I don't remember the exact details. It was long ago and I didn't attach any importance to it. [291]

Q. It was a flying visit, so to speak?

A. At the yard, or with Mr. Black?

Q. With Mr. Black.

A. Very rapid, if you want to say it that way, just about.

Q. As a matter of fact, Mr. Black introduced you to his friend, didn't he?

A. I knew Mr. Friedman before. Mr. Black had introduced him to me.

The Court: I don't recall hearing his name before. In what connection was he acting in the matter?

Mr. Hokanson: If the Court please, Mr. Black's

(Testimony of Demetri Antippas.)

testimony was that on or about September 4 in the Company of Mr. Friedman, who had visited his yard with him, they met Mr. Antippas on the dock.

The Court: I remember what he testified to concerning Mr. Antippas' expressions. You may proceed.

Q. Isn't it a fact that you paused, slapped Mr. Black on the back and told him what a wonderful job he was doing?

A. I might have stopped momentarily and said, "Carry on the good work," or something of the kind. I didn't discuss anything at length with him or anybody else at the yard. I just talked to Mr. Williams.

Q. You didn't discuss anything further with Mr. Black [292] at that time?

A. I don't remember. I may have told him more than that. I don't have any recollection of the exact things I told him.

Q. Isn't it a fact that you told him on that occasion you were going to send him a \$30,000 progress payment immediately upon reaching New York?

A. I may have said I was going to send some money, but no more than that.

Q. Do you remember the amount you promised?

A. I said some money, I suppose. That is all I can tell you. I don't recall any exact words, I repeat.

Q. Did you fulfill that promise?

A. I sent some money, yes.

(Testimony of Demetri Antippas.)

Q. When?

A. I will have to look at this to tell you the exact date. I sent some money, I think about the 24th of September, to the General Steamship Company with the instructions to make the payment to the Commercial Ship Repair and to obtain a receipt for it.

Q. That was on the 24th of September?

A. I believe it was about that.

Q. You said in your direct testimony that Mr. Williams was supposed to keep you informed as to how he was spending your money. What do you mean by that? [293]

Mr. Howard: I believe that is the remark that counsel asked to have stricken, if the Court please.

The Court: Was it stricken?

Mr. Howard: It is my recollection that it was, Your Honor.

The Court: The objection is sustained.

Q. Mr. Williams did have authority to spend your money, didn't he?

A. Well, you will have to elaborate a little bit on that. It is a question which I couldn't answer the way you are putting it.

Q. Can you state to me definitely what the character of Mr. Williams' authority was? I don't understand it.

The Court: We will have to take the recess in the proceedings until tomorrow morning. We will be adjourned until tomorrow morning at 9:30.

(At 4:50 o'clock p.m., Friday, April 8, 1949, proceedings adjourned until 9:30 o'clock a.m., Saturday, April 9, 1949.) [294]

April 9, 1949, 9:30 o'clock, a.m.

DEMETRI ANTIPPAS

Cross-Examination

(Continued)

By Mr. Hokanson:

Q. As I understand your testimony, Mr. Williams had authority to negotiate the price of certain items, or pledge your credit for small items, but not for large items, is that true?

A. No. I told you before, Mr. Hokanson, in answer to your question, that Mr. Williams did not have authority to negotiate items. He had authority to order items, of course, the orders for all items would come from Mr. Williams, but before he would order a large item, something of some magnitude, he would consult me about it; but the final approval of all prices would come from me.

Q. Irrespective of the amount?

A. Irrespective of the amount.

Q. So that you had no dividing line between large and small items as to his authority to sign on your behalf?

A. That is correct. He could sign only to the extent of the performance of the work, and, of course, of [295] the wording of the item.

(Testimony of Demetri Antippas.)

Q. You did authorize Mr. Williams, however, to purchase substantial engine parts down in Oakland, California, from the Union Diesel Engine Company, did you not?

A. After I had a list of what was necessary, I authorized Mr. Williams to go to Oakland, primarily to expedite the dispatch of the items I had ordered before from New York, which in all probability would have taken some time.

Q. You ordered those items already yourself?

A. I had ordered a large quantity of items before Mr. Williams came to Seattle. We had ordered them before we started the work. A large number of items I had ordered directly from New York and we were billed directly to our office, as we did in the other items.

Q. Do you deny Mr. Williams purchased any items for your account from the Oakland Engine Company, the Union Diesel Engine Company?

A. I repeat, Mr. Williams went to Oakland.

Q. Answer yes or no.

A. I do not deny that, because as I told you before he had my approval to purchase certain additional items in addition to the ones I had ordered before, but that was after my approval, of course.

Q. Had you designated specifically what items he [296] might purchase?

A. There were quite a number of small items which he told me, "There are a number of small items which I would like to purchase for the en-

(Testimony of Demetri Antippas.)

gine," probably there were an aggregation of a lot of them. I did not inquire into the nature, but Mr. Williams always consulted with me before taking any such steps.

Q. What was the amount in terms of dollars and cents you had previously ordered from Union Diesel?

A. I have no specific recollection, unless I see the bills.

Q. Were those bills paid from New York?

A. Some of them, the things that we ordered directly from there, were paid in New York. The others, we remitted money to the General Steamship Company here in Seattle and paid for our account at our approval.

Q. Mr. Williams was the one who signed those accounts with the General Steamship Company authorizing the disbursement?

A. Well, in the case of engine parts, there are no debatable items. It is fixed prices. There is no such thing as a debatable or negotiable item when you purchase an engine part. It is cataloged and I know the price before I order it, because I have a catalog in my office.

Q. The items that were paid by General Steamship [297] Company were the items that Mr. Williams had ordered, since the money had been forwarded out here to take care of that, is that correct?

A. Yes, I had remitted a certain amount of money to General Steam for the purpose of paying

(Testimony of Demetri Antipapas.)

for certain items which came C.O.D.

Q. You didn't know the parts that were necessary to be purchased by Mr. Williams, did you?

A. Some of them, I did; the smaller ones, I didn't ask because I didn't feel it was necessary.

Q. Do you know how much General Steam paid out for those items?

A. Not unless I see the accounts again. I can't remember these figures.

Q. You have no recollection?

A. No. I can't even remember what exactly was the total amount of money, that we paid to Union Diesel.

Q. Did you and Mr. Williams ever discuss the price of any of these items of extra work which he ordered done on the *Urania*?

A. Mr. Williams didn't have any specific idea of what the exact price would be, in most cases.

Q. Just answer the question.

A. We did, in a general way.

Q. When? [298]

A. Sometimes before the item was performed, in which case he did not give me a complete picture.

Q. You then had a general idea of what it was going to cost?

A. Not exactly, because I am perfectly aware that a figure which might be given in advance might vary greatly from what would be the final result.

Q. When did you discuss these matters with

(Testimony of Demetri Antippas.)

Mr. Williams?

A. We discussed on the telephone about the progress of the work in certain instances. I don't recall the exact dates or what was said exactly.

Q. How often did you discuss it?

A. I couldn't tell you that either, because I have no recollection of the frequency of the calls.

Q. Was it often as once a week?

A. Possibly, I don't know.

Q. But you were in communication with him all throughout this period, isn't that right?

A. Of some kind, yes.

Q. Did you ask him specifically what extra work he had ordered, so that you would know what progress was being made with the vessel?

A. As I can remember, it is an accumulation of small items, which I could not exactly ask him one at a time. [299] It would take a long time to talk about it, and over the telephone, it is difficult to describe something of this nature.

Q. How could you determine whether a particular item that Mr. Williams discussed with you as having been ordered was large or small?

A. I can differentiate between the installation of a flange and the overhaul of a boiler.

Q. Could you differentiate in advance in terms of dollars and cents?

A. I know one is high and the other is low, but I couldn't tell the exact figures.

Q. You have discussed with Mr. Williams the

(Testimony of Demetri Antippas.)

matter of repairing the boiler, didn't you?

A. To some extent, yes.

Q. Was that a large item?

A. I considered it a little higher than usual. I considered it a little more than just, as I have said, the repair of a pipe.

Q. Wasn't it considerably larger than what you have described as a small item?

A. That is a matter of comparison. I can't remember offhand.

Q. Did you discuss with him the tentative price of that item? [300]

A. Not exactly. I don't remember him giving me any specific figure on it, I can't remember.

Q. If you didn't know what it was going to be, did you authorize him to go ahead and order it?

A. Yes, I did.

Q. Your real arrangement, then, Mr. Antippas, was that Mr. Williams could order such additional work as he found necessary in connection with the conversion of the vessel, and tentatively agree on prices subject to your ratification?

A. Not tentatively agree on prices. Please don't misunderstand me, Mr. Hokanson. I will try to give you a clear picture of what I mean. Mr. Williams, of course, acting on my behalf, and trying to protect my interests, would try to inquire into the extent of the cost, or probably try to point out certain items which would be too high, but not accept anything for my account unless I saw it.

(Testimony of Demetri Antippas.)

Q. What was your idea about how the price should be fixed on this extra work?

A. In the same manner that I have done it many times, and that is that I be forwarded a draft or a bill of some form with adequate description for me to look over, and certain items which would be to my opinion too high, I would with the help of Mr. Williams try to analyze, and if [301] I could not reach such a conclusion, I would ask for a breakdown or complete analysis of that item so I could be guided in my decision as to whether this would be right or wrong.

Q. Was that arrangement outlined with Mr. Black or Mr. Featherstone?

A. To my knowledge, it is a standing arrangement at every yard I have been in.

Q. In other words, you were just basing that upon custom in your dealings with other yards?

A. In my dealings with other yards in the East Coast and West Coast.

Q. You had never dealt on the West Coast, had you?

A. I have.

Q. Prior to this time?

A. After this time.

Q. I mean prior to the Urania job.

A. The dealings I had with the western yard were just about a few days later.

Q. But you mean after the work was completed out here?

A. Yes.

(Testimony of Demetri Antippas.)

Q. So that then your assumption is based not upon what you knew concerning the custom on the West Coast, but in your dealings with other companies with whom you had had numerous transactions? [302]

A. I wasn't under the impression that there was such a great deal of difference throughout the United States as to custom.

Q. But your answer to my question would be yes, would it not?

A. If you will repeat your question, I may be able to answer.

Q. Read the question, please.

(Last question read by reporter.)

A. No. I have heard of other transactions on the West Coast from people associated with me.

Q. I just want an answer, yes or no.

Mr. Howard: I believe the witness should be entitled to explain his answer, if the Court please.

The Court: I believe that is correct, but I would like to hear the question repeated and also the answer.

(Last question and answer read by reporter.)

The Court: The objection is overruled.

Q. And these matters of which you have heard were subsequent to your negotiations concerning the Urania? A. Prior and subsequent.

Q. Is the custom that you have referred to in respect to arriving at the price for repair work an invariable custom? [303]

(Testimony of Demetri Antippas.)

A. I wouldn't know, at least to my knowledge.

Q. In many cases, you order the work where you negotiate the price in advance, isn't that true?

A. I did with Mr. Black. I negotiated certain items myself, and they are the ones called negotiable items. All the others are not negotiable items, because they are figured out on the basis of a proceeding that must be according to what we find as we go along, while negotiated price is like the three items mentioned in one of the exhibits I had here before, which I negotiated directly with Mr. Black.

Q. When you were here on September 4, did you check the shop orders that had been issued for extra work up to that time? A. I did not.

Q. Did you make any effort to determine how much extra work had been ordered?

A. I knew from Mr. Williams that it was not a considerable amount at this time. It was something very low, and I was not particularly concerned.

Q. As a matter of fact, about half of the extra work had been ordered at that time, isn't that true?

A. I don't know.

Q. Did you make any effort to find out?

A. From my conversation with Mr. Williams prior to [304] my arrival, I was under the impression that the extra work was not of a serious nature or an extended form.

Q. You had negotiated prices with Mr. Black on certain items of the main contract before you left, had you not?

(Testimony of Demetri Antippas.)

A. Yes, I did, because I knew of those items.

Q. Did you make any effort when you were here on September 4 to negotiate prices covering the extra work that had been ordered at that time?

A. I did not see Mr. Black in the yard at the time.

Q. Did you make an effort to have a conference with Mr. Black?

A. I did not. I didn't see any reason why I should.

Q. Did you talk to Mr. Featherstone during that period? A. Very briefly.

Q. Concerning what?

A. Concerning the general progress of the work.

Q. What was the conversation concerning that?

A. I couldn't recall the exact words. It is hard for me to remember something that was said so long ago.

Q. Getting back to Mr. Williams again, if he had authority to order the work for you but not to negotiate the price, how did you propose to establish the price with Mr. Black? [305]

A. I told you before that I expected that after the total completion of the work, all of the time sheets and the material and the labor that went into the work should be collected by the yard and a bill form or a rough sketch of the whole thing should be sent to me, and I would determine with Mr. Williams and with his guidance as to which items were right, which in our opinion were high, and if we

(Testimony of Demetri Antippas.)

did not have enough information on the matter, we would ask for additional information.

Q. That was the understanding that you had of the whole matter, but you did not communicate that to Mr. Black?

A. I communicated it. Mr. Williams knows that that is my procedure, and I assumed Mr. Black was aware.

Q. I asked you if you communicated it to Mr. Black? A. Not specifically.

Q. You didn't expect to negotiate these prices covering 70 or 80 or 90 thousand dollars worth of work after the ship left Seattle, did you?

Mr. Howard: I object to the remark of 79 or 80 or 90 thousand dollars worth of work. The pleadings show that that amount is not involved in the extras here. We have already reach a stipulation as to the amount of the contract work, 41 thousand odd dollars.

Mr. Hokanson: May it please Your Honor, I think [306] it is clear from the witness' testimony he had no knowledge of what the amount would be, and I will ask him a further question as to whether he recognized that it would be a very substantial bill.

The Witness: I don't think there should be too much of a substantial bill.

The Court: May I interrupt to remind counsel on both sides that at least three important issues here involved are: one, whether libelants were com-

(Testimony of Demetri Antippas.)

petent ship repairers; two, whether the work done in the case was in fact in accordance with good ship repair yard standards of quality; three, whether Mr. Williams was in fact authorized to approve the work and to order extras, and if his authority in any respect was limited, whether such limitation was known to the libelants.

There are other issues, but those I feel I should remind counsel of, counsel on both sides.

Mr. Howard: I renew my objection, if the Court please, to that question on behalf of the figures counsel has used in that question. We have \$41,000 in contract work, and the balance of the amount claimed in the libelants' and respondent's exhibits, and it certainly does not total 70 or 80 or 90 thousand dollars.

The Court: Is it material for counsel cross-examining to include in the question not only the extras, but also the original contract work?

Mr. Hokanson: Your Honor, I will withdraw the question.

Q. You knew, Mr. Antippas, that the amount of this bill would be sizeable, did you not?

A. It all depends upon what you mean by sizeable.

Q. You knew it would be thousands of dollars rather than hundreds, did you not?

A. That is perfectly obvious.

Q. Did you expect to negotiate those prices after the ship had gone from Seattle?

A. Yes.

(Testimony of Demetri Antippas.)

Q. Without an opportunity to see what installations had actually been made?

A. Well, I would be guided by what Mr. Williams told me, and by the subsequent performance of the vessel, because it is impossible to determine good work unless the vessel goes to sea.

Q. So then you wanted to wait for a period of time to see whether the work was all right before you paid the bill, is that right?

A. Not necessarily.

Q. What do you mean by the last statement?

A. You told me how I could determine, and I tell you in which way I can. I didn't say I would wait that long [308] before I could pay it or make certain arrangements.

Q. What was the purpose of your visit here on September 4?

A. I wanted to see how much work was accomplished in the period stipulated in the original letter which I had from Mr. Black.

Q. What did you expect to find in terms of progress?

A. I expected to find all of the superstructure finished, and most of the contract work finished, if not all of it.

Q. That is the reason you came out here?

A. And also to see the vessel in drydock. I wanted to see the underwater parts of the vessel.

Q. Did you express any displeasure at that time to any representatives of Commercial Ship Repair

(Testimony of Demetri Antippas.)

concerning the progress of the work?

A. I didn't.

Mr. Howard: Objected to as repetitious.

The Court: The objection is sustained. Be careful not to cover the same ground today which was covered yesterday afternoon on cross-examination. I feel certain that substantially this same question was asked yesterday afternoon of this witness, so please avoid repetition.

Mr. Hokanson: Very well, Your Honor. [309]

Q. After your visit, you thought enough of the caliber of the work being performed on the vessel and as you observed it on your visit of September 4 to order another one of your vessels down here on September 14 from Vancouver, B. C., to have \$10,000 of repair work done on it, didn't you?

A. It seemed to be the most convenient location, and we are usually guided by the location of the vessel in ordering the work.

Q. But you did send your vessel to Commercial Ship Repair yard at Winslow, did you not?

A. I wanted to show my appreciation, and I believe——

Q. Answer yes or no.

A. It all depends on which form you ask me the question.

Q. Did you order the vessel to the Winslow yard? A. I did.

The Court: Which vessel do you refer to in the last question?

(Testimony of Demetri Antippas.)

Mr. Hokanson: The Pinta.

A. That is correct. I ordered the Pinta into the yard.

Q. And you knew there were other shipyards in Puget Sound, did you not?

A. Yes, I did.

The Court: May I ask counsel to let the witness make clear whether the Pinta was the vessel referred to as the one sent down from Vancouver? Will you let the witness make that clear, because the record does not show it, I do not believe.

You asked him first about a vessel sent down from Vancouver, and later you asked him about a vessel, the Pinta. Let the record show whether the two vessels were one and the same.

Q. What vessel did you send down from Vancouver in September, 1948, to the Winslow yard?

A. The Pinta.

Q. And that was on or about September 14, wasn't it?

A. I believe so. I couldn't be exactly certain of the date.

Q. Did you talk with Mr. Williams at the time you were here on September 4?

A. Yes, I did.

Q. Did you talk to him concerning why the work had not progressed further than the point you had indicated it had at that time?

A. I asked him something of the kind, and I believe he gave me an answer.

(Testimony of Demetri Antippas.)

Q. You knew Mr. Williams was in New York on October 9? A. I did, I believe so.

Q. And you arranged an appointment with him for Monday, [311] October 11, in your office?

A. I believe I did.

Q. But you left town on Monday?

A. I was forced to.

Q. And you didn't notify Mr. Williams, or call him before leaving?

A. I tried to. He was not at his office.

Q. You did call him?

A. I think I did.

Q. Did you have his home telephone?

A. Not to my knowledge, I don't think I have it. I have just his office telephone.

Q. You didn't call him when you returned Monday night to the City of New York, did you?

A. I believe Mr. Williams went to my office and found out I was not there, and I would be in afterwards.

Q. Isn't it a fact that Mr. Williams' office is one that has 24-hour telephone service?

A. I think so. I don't know.

Q. You didn't call Mr. Williams on Tuesday, even though the telephones were working on Columbus Day, did you?

A. I didn't know where to reach him.

Q. Do you know where his office is?

A. I do.

Q. Did you try to contact him? [312]

(Testimony of Demetri Antipapas.)

A. I don't remember. That is something which I couldn't tell you.

Q. You knew the ship was fitted for sea when Mr. Williams had come to New York, didn't you?

A. No, the vessel was not fitted for sea when Mr. Williams came to New York.

Q. You had plans for the vessel, had you not?

A. I had plans, but the work was not completed.

Q. Then you discussed it with Mr. Williams?

A. I didn't have a chance to. I discussed it with the master.

Q. When did you discuss it with the master?

A. I was in pretty direct contact with the master, and he informed me.

Q. When?

A. I don't recall the exact date.

Q. Was it before October 9?

A. Probably on October 9, for all I know.

Q. Did you know at that time that the vessel had passed its sea trial?

A. It had not passed its sea trial, and the work was not completed on the ship. There were still workmen on the ship.

Q. Had it passed its sea trial on October 9?

A. Not all of it. [313]

Q. What part had it not passed?

A. To begin with, the Clayton boiler was not in operation.

Q. Just a moment.

A. I am answering your question.

(Testimony of Demetri Antippas.)

Mr. Howard: Give the witness a chance to answer your question.

The Court: That does not keep you from asking another question after he has made answer.

A. I was informed that the work was not finished in respect to the Clayton boiler and several other small items, and that the Commercial Ship Repair people were still on the boat at the time Mr. Williams was in New York, and even practically until the day she sailed.

Q. Who informed you of that?

A. The captain, and it is also borne in his log.

Q. Mr. Williams came to New York? He was your representative to supervise the completion of this work on the *Urania*, wasn't he?

A. Not necessarily.

Q. You mean to say that he was not your representative here? A. He was.

Q. Wasn't he out here to supervise the work?

A. He was. [314]

Q. And you had knowledge prior to his arrival in New York that the work was not completed on the vessel?

A. I don't remember whether I had it prior to his arrival, but Mr. Williams came to New York, as I found out later, because he had some disagreement on the bills.

Q. But in spite of the fact that you knew that there was something wrong, as you say, with the Clayton boiler, you took no pains to see Mr. Wil-

(Testimony of Demetri Antippas.)

liams about it, who had overseen the job for you?

A. I don't see why I should, because as long as something was not completed, the only thing I can say is that the yard was obliged to finish it to our satisfaction.

The Court: It would make the examination shorter if the witness would answer the question yes or no, and then add any explanation if he feels it is necessary to make an answer full, true and correct. Make a direct answer, directly responsive.

The Witness: Yes, Your Honor.

Q. Read the question, please.

(Last question read by reporter.)

A. No, I did not. I felt I knew enough about it.

Q. How could you know enough about it if you weren't out there to see the job?

A. I could hear from the chief engineer and the captain. [315]

Q. You knew Mr. Williams, nevertheless, could give you a report on the vessel, didn't you?

A. Mr. Williams would give me a final report on the vessel.

The Court: The question was, did you know that?

The Witness: Yes, I did.

Q. When was the sea trial, if you know?

A. I believe it was on or about October 4th or 5th, I don't know the exact date.

Q. It was on October 6, wasn't it?

A. It may be, I don't recall the exact date.

(Testimony of Demetri Antippas.)

Q. You didn't have such a large fleet of ships at the time that you were not concerned about discussing the condition of the *Urania* with Mr. Williams before sending the ship on a long sea voyage, did you?

A. I did not understand your question.

The Court: Read the question.

(Last question read by reporter.)

The Court: Can you make it shorter in some way?

Mr. Hokanson: I will rephrase the question, if you have difficulty in answering it.

The Witness: Yes, I am afraid I have.

Q. The *Urania* was one of five vessels owned by your company at that time, is that correct?

A. That is right. [316]

Q. And you certainly would not contemplate sending that vessel on a long sea voyage without first discussing with your surveyor the condition of the vessel preparatory to sending it to sea?

The Court: Would you? Put the question in the form of a question, do not leave it just as a statement.

Mr. Hokanson: I left it in the question form.

Q. Would you be concerned about the vessel's condition before sending it to sea?

A. In some ways, I would.

Q. In what ways?

A. If I knew that the work was not completed in a satisfactory manner, or if I knew that the

(Testimony of Demetri Antipapas.)

American Bureau of Shipping had some objection as to the vessel in one way or another.

Q. Then in this case you had so much confidence in the Commercial Ship Repair Company that you didn't think it necessary to discuss the condition of the vessel with Mr. Williams before sending it out, is that true? A. That is not so.

Q. Why then did you order the vessel to sail on October 13?

A. A vessel can be seaworthy in some ways and still have a lot of defects on her, and I was satisfied that the seaworthiness of the vessel was fairly well established, but [317] there were certain items which were not completed to my satisfaction.

Q. But you did order the vessel to sail before you talked to Mr. Williams, didn't you?

A. I suppose I did.

Q. I want to know whether you did or did not, definitely. A. Apparently I did.

Q. How did you communicate the order to the vessel to sail?

A. By telephone to the captain.

Q. And do you remember when that was?

A. I don't remember. I told him to sail upon completion of the work.

Q. When?

A. I don't remember the exact date. It might have been a week before.

Q. Do you mean that you were not in communication with the captain on October 13, 1948?

(Testimony of Demetri Antippas.)

A. Not on October 13, I don't think.

Q. You called the captain before he announced his intention to sail the vessel to Commercial Ship Repair, didn't you, on the same date?

A. I don't think so.

Q. But you didn't communicate to Commercial Ship [318] Repair any information as to the sailing date of that vessel, did you?

A. Commercial Ship Repair was aware that the ship would sail after completion of the work.

Q. How were they aware of that?

A. It is obvious that when a ship is completed, it goes.

Q. Did you tell them when you were going to sail the vessel?

A. The Captain did, I did not.

Q. Why did you not tell them when you were sailing the ship?

A. I felt that the information was the same whether coming from the captain or from me.

Q. Did you tell General Steamship Company when you were going to sail the vessel?

A. When the work would be completed.

Q. You knew that Commercial Ship Repair would not release that vessel without payment or arrangement for payment, didn't you?

A. I did not.

Q. Before examining that instrument, did you know the policy of Commercial Ship Repair regarding payment on foreign flag vessels before you

(Testimony of Demetri Antippas.)

gave the order to the ship to sail? [319]

A. I was aware there was some difficulty in the previous ship, but I thought we had all straightened it out.

The Court: That does not answer the question. The Court does not know any more about this question with this answer than I knew before the answer was made. Answer it directly.

Read the question.

(Last question read by reporter.)

A. I was aware of some kind of arrangements, some kind of policy they had.

Q. What was that policy, if you knew?

A. I was informed in the case of the Pinta that they would require payment before she left, even before I received the bills, something to which I objected.

Q. Calling your attention to Libelants' Exhibit 3, did you receive that letter? A. I did.

Q. When did you receive it?

A. Shortly after September 23, the date is. I can't recall the exact date.

Q. Where were you at the time you received it?

A. In New York.

Q. Did you examine the letter carefully?

A. I did. [320]

Q. Did you ever respond to that letter?

A. By telephone, yes.

Q. To whom? A. To Mr. Black.

Q. On what date?

(Testimony of Demetri Antippas.)

A. On a date prior to the vessel's sea trial.

Q. What discussion did you have with Mr. Black at that time?

A. The discussion was whether he had received our progress payment, and if anything else would be required before the vessel goes out on sea trials.

Q. Did you discuss with him anything further about final payments on this vessel?

A. I wantel to know when final payment would be required.

Q. What did Mr. Black inform you?

A. Mr. Black very plainly informed me nothing should be required, and we should not worry about the bill, and that everything was all right.

Q. On what date?

A. That was, I believe, on the day prior to the trial. I called him.

The Court: Prior to the sea trial trip?

The Witness: Yes, Your Honor.

Q. Calling your attention to the first paragraph of [321] Libelants' Exhibit 3, you will notice that Mr. Black therein states that it was customary that all foreign ships leaving repair yards on the Pacific Coast either arrange for payment or make payment in full before leaving the contractor's yard?

A. Yes, I see the statement.

Q. Did you ask him whether he was specifically making an exception to that policy in your case when you talked to him on the telephone on October 5?

(Testimony of Demetri Antipapas.)

A. I asked him in very plain language if anything else would be required, and Mr. Black said no.

Q. Did you at that time make any outline of arrangements as to how you would pay the bill on this vessel?

A. Mr. Black did not ask me and I didn't tell him.

Q. Calling your attention to page 2 of Exhibit 3, the first paragraph there, did you inquire of Mr. Black whether he would waive his request there that you make a written outline of your arrangements for payment?

A. No, I did not ask him.

Q. Would you read that paragraph?

A. "If you would write us an outline of whatever way you wish to make payments on your ships while in this port, we should be only too glad to cooperate with you, and assure you want your friendship, your business, and will do everything within our power to give you good work and value received." [322]

Q. Did you arrange any collateral or security with Commercial Ship Repair before ordering the vessel to sail?

A. No, I did not, because I was not asked to.

Q. As a matter of fact, you scrupulously avoided Mr. Williams in New York City from October 9 until October 14, did you not? A. I did not.

Mr. Howard: I object to that, if the Court please, as argumentative.

(Testimony of Demetri Antippas.)

The Court: The objection is overruled.

A. I did not.

Q. You knew he had a report to deliver to you concerning the vessel, didn't you?

A. No, I didn't, because a report is usually handed in much after the vessel sails.

Q. You knew he had invoices in his possession, did you not?

A. I knew he had something in his possession as to the bills covering the boat, I didn't know exactly what he had.

Q. Why did you order him to meet you Monday morning?

A. I wanted to discuss this thing with him.

Q. But you made no further effort to get hold of him thereafter until the ship had been libeled, did you?

A. I expected Mr. Williams in my office on the first [323] working day of the week.

Q. Did you know on October 9 that there was some disagreement about the bill, as you have previously testified?

A. I knew that Mr. Williams had some objections to the value of some items on the bill, yes, I did.

Q. How did you know that?

A. I believe Mr. Williams had told me that there was some kind of disagreement on the bill before, previously to October 9.

Q. When did he tell you that?

(Testimony of Demetri Antippas.)

A. I don't recall; sometime during the previous week, I believe.

Q. Was it over the telephone?

A. I believe so.

Q. Did you at that time request a breakdown of time and material on this job?

A. I wanted first—I did not, because I wanted first to see what was presented to me and then ask for a breakdown of materials and labor on the items I felt were too high.

Q. Speaking of Captain Beis, isn't it true that he has only worked for your company since the latter part of 1946?

A. No. [324]

Q. Are you aware that the captain has under oath testified that he first sailed with your company in the latter part of 1946?

A. He sailed with our company directly as a Panamanian company, but he had sailed before for vessels which had some connection with our office, before that.

Q. Vessels owned by your office?

A. Managed by our office.

Q. So that he actually was not in the employ of your corporation prior to that date?

A. He was hired by me and he worked under my directions.

Q. Do you wish to correct your testimony of yesterday that he had been in your employ for over six years?

A. If you technically want to state it that way, I would.

(Testimony of Demetri Antippas.)

Q. Your company was not doing business in the State of Washington in October 1948 was it, as a corporation?

A. We were not doing business in the State of Washington; we were doing business in the State of New York.

Q. Your corporation is a foreign corporation, is it not? A. Yes.

Q. You had not posted any collateral or security either in Seattle or Winslow for the payment of this bill? [325]

A. No, I did not, because I was not asked to.

Q. You had not advanced any funds to your agents to pay that bill at that time?

A. No, because I didn't see the bills and I wouldn't pay for something I don't see.

Q. Under those circumstances, you expected Commercial Ship Repair to await your whim as to the payment of these bills?

Mr. Howard: That is objected to as argumentative, if the Court please. I think the facts speak for themselves.

The Court: That objection is sustained, in view of the wording of the question.

Q. You expected Commercial Ship Repair to await your pleasure as to whether the price they had fixed met with your approval?

Mr. Howard: Same objection.

The Court: Overruled.

(Testimony of Demetri Antippas.)

A. I expected Commercial Ship Repair, if they wanted something to guarantee, to either ask for a letter of guarantee from somebody that would accept it, as Simpson, Spence & Young, who represent us in New York, or post bond, which we would have done gladly, but I still think I should be allowed to look at bills before I pay them.

Q. You knew that after the ship sailed from Puget [326] Sound for foreign waters that it would be most difficult for Commercial Ship Repair to collect that bill if you wanted to dispute any of the items?

A. I don't think so. I have a different opinion on it.

Q. You weren't doing business in this state, were you?

A. We were doing business in the State of New York and in all of America.

Q. In other words, you wanted Commercial Ship Repair to go back to New York to try to collect the bill if you disputed it?

A. No, I would come here myself to dispute it with them.

Q. Why didn't you come out then when you knew that Mr. Williams had a dispute over the amount of the bill, as you say?

A. I don't know why, I was probably detained, but I wanted to see the vessel and then decide on it.

Mr. Hokanson: You may examine.

(Testimony of Demetri Antippas.)

Redirect Examination

By Mr. Howard:

Q. Why did Captain Beis leave the tanker Urania?

A. I ordered him ashore to make his deposition, and the tanker had to sail and therefore I had to take him [327] off that ship.

Q. When was he taken off the ship?

A. I don't recall the exact date. It is when the ship was in New Orleans, where she was loading, and that was about the only time I could get Captain Beis for a deposition, because the ship was sailing for foreign waters.

Mr. Howard: At this time, if the Court please, I would like to offer Respondent's Exhibit A-4. That exhibit was identified by the witness on direct examination. At this time, I am offering it.

Mr. Hokanson: If the Court please, I would like to examine the witness further concerning the admissibility of this document.

The Court: You may do so, but I recommend to counsel on both sides in the future that you observe the prima facie showing, if there is any such, or at least the evidence relating to the showing on direct examination of——

Mr. Hokanson: I will now object without further examination.

The Court: ——admissibility, and if there is a prima facie showing, I tell you that usually the Court admits an exhibit and then the cross-examina-

(Testimony of Demetri Antippas.)

tion may be indulged as to that, as well as to all other matters gone into on direct. [328]

I remind counsel on both sides that in respect to almost every exhibit in this case, opposing counsel has asked for some such leave as that now asked here. It is rather unusual that the need for such develops in connection with every offered exhibit. You may inquire, with that explanation.

Mr. Hokanson: I need not inquire further, if Your Honor will recall the testimony concerning this document. I object to the admission on the ground that the witness has testified that this represents a copy of certain specifications that he carried with him, copies of which he in turn submitted to certain ship repair companies in the Puget Sound area. The pencil notations in each case concerned what he wanted done and what he did not want done. The document bears no such notations, and I submit, Your Honor, it is therefore not admissible in evidence.

Mr. Howard: If the Court please, this witness has testified that this document was furnished with some notations to the yards that were requested to bid on the work, and by this witness and other witnesses libelant has produced it has been developed that other specifications were drawn from these specifications. I am offering this only for the benefit of the Court in showing basis and background for the specifications [329] for the contract work that was eventually agreed upon.

The Court: Does it have on it copies of the nota-

(Testimony of Demetri Antippas.)

tions which are the point connected with this exhibit?

Mr. Howard: This particular copy does not, if the Court please. I believe libelant has in its possession a copy with the notations.

The Court: Has it any relation to any other exhibit already in evidence?

Mr. Howard: Yes, Your Honor.

The Court: Which one?

Mr. Howard: It has a relation to Libelants' Exhibit 1.

The Court: Does it contain the same information as Libelants' Exhibit 1? Is there any difference?

Mr. Howard: It has been testified to that Libelants' Exhibit 1 was prepared from this document.

The Court: They are not carbon copies, or run off the same machine?

Mr. Howard: No, Your Honor. This document I am now offering is much larger and covers much more ground than Libelants' Exhibit 1. Since it has been testified that certain specifications were furnished to several yards that were asked to bid on this work, and libelants' own witnesses have testified that they prepared [330] certain specifications, being Libelants' Exhibit 1, from the data that had been furnished by the claimant corporation, it seems to me that it is entirely proper for this document to be furnished for the Court's guidance to show how Libelants' Exhibit 1 was prepared and what relationship there is between the two.

The Court: The Court is ready to rule upon the

(Testimony of Demetri Antippas.)

matter. Respondent's Exhibit A-4 is admitted, the objection thereto being overruled.

(Respondent's Exhibit A-4 received in evidence.)

Mr. Hokanson: May I ask the Court to state whether there is any limitation upon the purpose for which this document is admitted in evidence?

The Court: The Court has not placed any limit upon the exhibit. It is received in evidence, and those connected with the case are charged with a recollection of the explanatory authenticating testimony in connection with this exhibit.

Q. Did you advise the representatives of Commercial Ship Repair at the time you were in Seattle on August 4th or 5th to arrange for the work to be performed as to the extent of the authority that Mr. Williams had acting as your representative in Seattle? A. I did. [331]

Q. Will you state now what you told Commercial Ship Repair at that time as to the extent of the authority of Mr. Williams?

A. That Mr. Williams was in Seattle as my representative in respect to the work being performed on the vessel, in a supervisory capacity, and also with the authority to order some items of extra work to be performed, and that under no circumstances should anything be ordered other than by Mr. Williams, and that included the captain and the chief engineer and all the rest of the personnel of the vessel.

Q. Did you advise Commercial Ship Repair of

(Testimony of Demetri Antippas.)

any limitations or restrictions on the authority of Mr. Williams as your representative?

Mr. Hokanson: May it please the Court, I think that question has been quite fully developed on direct examination. I think it is repetitious at this time.

The Court: What is there in cross that causes you to have this right now, at this stage of this witness' testimony?

Mr. Howard: If the Court please, I was prompted by the Court's reminder to us of the principal issues that you felt were before the Court, one of them being Mr. Williams' authority to approve the work, and whether [332] the authority was limited and known to the libelants. I am merely trying to develop if he knew exactly what that authority was.

The Court: You may ask this question.

A. I did not in so many words. I stated what he was supposed to do and what he was authorized to do. I did not say what he was not authorized to do, believing that the explanation of what he could perform for me was enough.

Q. Why was such an arrangement made with Mr. Williams?

A. We always have such an arrangement made, because I believe I am entitled and have the privilege of examining the bills before I pay them. I believe it is good policy.

Mr. Hokanson: I move that the latter part of

(Testimony of Demetri Antippas.)

his answer be stricken. He is arguing and not answering the question.

The Court: The answer is responsive and the objection is overruled.

Q. How was this arrangement carried out between you and Mr. Williams as to the work on the Urania?

A. Mr. Williams comes to New York with the bills, which are presented to me, and with the assistance of Mr. Williams, each item is examined and the cost of such item is determined, whether correct or too high. In the instances where such an item has not enough information for me to [333] decide whether the item is too high, I request further information as I did in this case, because the bill was—there were too many items under one cost. It was not broken down into separate items.

Q. You stated on cross-examination that you had had some advance discussion with Mr. Williams regarding the cost of extras. Was the amount to be charged by the yard for the items of extra work indicated to you at that time?

A. Not exactly. I had some kind of information that this item would run into thousands instead of hundreds.

Q. The actual amount charged by the yard was not known to you at that time?

A. Not whatever.

Q. When you were out here on September 4, did Mr. Black or Mr. Featherstone request you to go

(Testimony of Demetri Antippas.)

over the shop orders to determine the cost and the amount to be charged?

A. No, not whatsoever.

Q. Did anyone else from Commercial Ship Repair ask you to go over those accounts?

A. Nobody.

Q. Did anybody from the Commercial Ship Repair ask you on September 4 to approve any accounts?

A. No.

Q. You have referred to a sea trial on October 4 or October 6. Was another sea trial held later on? [334]

A. No, just one.

The Court: May I ask in that connection the witness to state whether or not he was advised of any substantial objection to the work done on the vessel and to the performance by the vessel as a result of that sea trial? Did he or anyone on his behalf raise any objection to any work done or to any ship performance as a result of that sea trial?

Q. Will you answer that question, please?

A. Yes, Your Honor. The captain and the chief engineer who were going to sail the vessel had some objection as to some of the work performed on the vessel.

The Court: If you know, will you explain what those objections were?

The Witness: The main objection that I am quite certain I remember was the Clayton boiler, which is quite an important part of the vessel. That was not in operation until, I suppose just until

(Testimony of Demetri Antippas.)

the day the vessel actually sailed after the sea trial.

The Court: Was the Clayton boiler supposed to be in use on that sea trial?

The Witness: It was supposed to be in use on that sea trial, because the sea trial determines whether a vessel is ready to go to sea.

The Court: Was it used on that sea trial? [335]

The Witness: I don't know whether it was or wasn't, Your Honor.

Q. Was there some defect or deficiency discovered in the Clayton boiler at the time of the sea trial?

Mr. Hokanson: If he knows.

A. I believe it did. I am not absolutely certain, on the sea trial or immediately upon returning from the sea trial.

The Court: State if you know what was done or attempted to be done thereafter in connection with any such objection.

The Witness: Mr. Williams not being here after the sea trial, Mr. Clark, an independent surveyor in Seattle, was asked to go aboard the vessel for the account of the owners to supervise and examine such defects found in the boiler, and I believe it was found as per his report that the feed pump was leaking from the plunger and from some joint on the feed pump, and therefore rendered the boiler not serviceable.

The Court: Did he require some improvement of that condition?

(Testimony of Demetri Antippas.)

The Witness: Yes, Your Honor.

The Court: With what result?

The Witness: With the result that Commercial Ship [336] Repair sent men on the ship to complete that work, and certain other items which I cannot recall the exact nature of, but this was the major one. Mr. Featherstone was present at such examination and repair.

The Court: With what final result?

The Witness: With the final result that the boiler was then deemed serviceable.

The Court: Was any objection made on behalf of the owners after such deeming serviceable?

The Witness: Not that I recall, Your Honor.

Mr. Howard: Your Honor, I might state that we have the depositions of Mr. Clark and another witness who will develop the point as to this Clayton boiler, and we intend to develop that in our case on the cross-libel.

The Court: Proceed.

Q. Assume that after the sea trial on October 4th or 6th, everything aboard the vessel was passed to satisfaction. What would you have done then with respect to the ship?

A. I would have ordered——

Mr. Hokanson: This is not proper redirect examination, if the Court please.

The Court: What was there in the cross-examination that makes this appropriate? [337]

Mr. Howard: If the Court please, counsel for

(Testimony of Demetri Antippas.)

the libelants has gone into great detail in cross-examination in trying to develop what transpired between Mr. Williams, Mr. Antippas and representatives of Commercial Ship Repair on or about the time of the sea trial, and what was Mr. Antippas' intention with respect to these bills and the payment of the account after they had been sent back to New York with Mr. Williams.

I certainly feel that we should be entitled to develop what would have happened on this vessel if it had passed satisfactorily on the sea trial with respect to the dispatch of the vessel from Winslow, particularly where he has testified—he has been asked by counsel for libelant what conversation he had with Mr. Black immediately prior to the sea trial as to payments to be made on the account. You recall that on cross-examination counsel asked him about his conversation and he testified everything was O. K.

The Court: May I hear the question?

(Last question read by reporter.)

The Court: Do you think it is specific enough, Mr. Howard? The Court does not feel that it is with respect to what kind of action or proceeding.

Mr. Howard: I will rephrase it.

Q. What were your plans with respect to sailing the [338] ship after the sea trial?

A. If the sea trial was satisfactory, the ship would have sailed forthwith, that means, immediately.

(Testimony of Demetri Antippas.)

The Court: Ask him another question.

Q. If Mr. Black told you that everything was O. K. just prior to the sea trial, then you would have sailed the vessel immediately after the sea trial? A. That is correct.

Mr. Hokanson: He is leading the witness.

The Court: That is sustained. The answer will be stricken.

Q. Did you receive a report from the master of the vessel as to the satisfactory completion of the repairs after Mr. Williams left Seattle to go to New York? A. I did.

Q. Do you recall when that was received?

A. I don't recall the exact date.

The Court: May I be reminded of the person from whom he received such advice?

Mr. Howard: From the master of the vessel, Your Honor.

Q. Can you relate that advice from the master as to the time that the ship was libeled?

A. I didn't understand your question.

Q. Can you relate the time of your receipt of the [339] advice from the master of the vessel as to satisfactory completion of the work as to the time when the vessel was libeled?

A. Yes, the report was received after the vessel was libeled.

The Court: I am not sure that I appreciate the meaning of the questions and answers, Mr. Howard. By that do you seek to bring out the attitude of the

(Testimony of Demetri Antippas.)

master with respect to the quality of the work, or what is the meaning and purpose of the inquiry?

Mr. Howard: The purpose of my question, if the Court please, is to bring out to the Court that Mr. Antippas received advice from the master after Mr. Williams left Seattle for New York that the repairs had been satisfactorily completed so that the vessel could go to sea.

The Court: You may proceed.

Mr. Howard: I have no further questions.

Recross-Examination

By Mr. Hokanson:

Q. When did you receive the report, if you remember, that you referred to?

A. Which report are you talking about, Mr. Hokanson?

Q. From the master. [340]

A. I stated before I don't remember the exact date.

Q. Was it before or after the libel?

A. I said after the libel.

Q. How long afterward?

A. I told you I don't remember the exact date. I just know in relation to the libel.

Q. Was it written or oral?

A. I believe it was oral, over the telephone.

Q. Did you know that the American Bureau of Shipping and Mr. Williams had approved the vessel upon the completion of the sea trial?

A. I knew the American Bureau of Shipping

(Testimony of Demetri Antippas.)

had approved.

Q. Mr. Clark was sent aboard the vessel concerning the Clayton boiler after the vessel was libeled, isn't that true?

Mr. Howard: If you know.

A. I believe so.

Q. And you had ordered the vessel to go to sea before the libel, hadn't you?

A. I had ordered the vessel to go to sea upon completion of repairs. I assumed when the American Bureau passed it everything was all right. It so developed it wasn't.

Q. So that you were in effect looking for defects after the vessel was libeled, isn't that true? [341]

A. I did not. They developed.

Q. Isn't it true that this Clayton boiler objection was never brought into this case until very recently, when you advised your counsel to amend his cross-libel to include that item?

Mr. Howard: I think this term "very recently" should be made more definite. That is a pretty broad term.

The Court: Sustained. Relate the time inquired about with reference to the commencement of this action.

Q. You knew about the alleged defects with the Clayton boiler on or about October 15, 1948, didn't you?

A. Yes, I did know of the defects.

Q. You did not cause that item of alleged dam-

(Testimony of Demetri Antippas.)

age to be injected into this case until March 18, 1949, isn't that true?

A. I did, because there were further repairs made at that time.

Q. The Clayton boiler has no connection with the main propulsion of the vessel *Urania*, does it?

A. It does not have connection with the main propulsion, but it has very direct connection with the general operation of the vessel.

Q. Then it was operated on the sea trial, is that correct? A. I assume it was. [342]

Q. Then the American Bureau passed the vessel after the sea trial, did it not?

A. I believe so.

Q. Then Mr. Williams passed it, did he not?

A. I believe so.

Q. In answering Mr. Howard's question on re-direct examination, you said that you requested further information in this case for your guidance with respect to the amount of the bill. When did you make such a request and to whom?

A. I made such a request to Mr. Williams when I saw him.

Q. Did you ever make it to Mr. Black or Mr. Featherstone?

A. I couldn't very well make it, because I hadn't seen any of the bills by that time.

Q. Did you ever make a request after the institution of the libel for further breakdown on that bill?

A. After the institution of the libel, Mr. Black was very definite that he didn't want to offer any

(Testimony of Demetri Antippas.)

more explanation about it. I tried to reach Mr. Black all day that day and I just couldn't

Q. What day is this?

A. The day of the 14th of October, after I received a cable for the libel in the morning. I tried all day to reach Mr. Black and ask why such action was taken and find [343] out what the whole story was, and I couldn't find Mr. Black.

Q. You did not reach him on the 14th?

A. I reached him in the evening of the 14th, after trying all his telephone numbers, and upon discussion with him he very definitely stated that he wanted the money and nothing else. He didn't want to give me any further explanation.

Q. Where was Mr. Black located by you?

A. I tried Mr. Black both at the Seattle office, at the Bainbridge office, and all over, and I was given certain assurance that Mr. Black would call me right back, and it was not until the afternoon of that day that I managed to reach Mr. Black.

Q. What time in the afternoon?

A. I don't remember. I have noted on this letter a number at Port Blakely where I had the information that Mr. Black was. I tried his telephone at Main 3122, Port Blakely 500, but it was some time in the afternoon that I reached Mr. Black.

Q. Where was he when you reached him?

A. I don't recall which of the numbers he was at, but I did reach him.

Q. Isn't it a fact that you talked to Mr. Black on the telephone at 11:30 A. M. Seattle time on Oc-

(Testimony of Demetri Antippas.)

tober 14 at his Seattle office? [344]

A. 11:30 A. M. Seattle time would be three o'clock in the afternoon in New York.

Q. So that would coincide with what you discussed with me here concerning the time?

A. Possibly, I don't recall the exact time when I reached him. I knew it was afternoon when I did.

Q. Did you at that time request an itemization of this account?

A. I did. I said I wanted to look at the accounts before I could make any decision, and Mr. Black was absolutely, very strong about it, and I don't remember the exact wording he used, but I was rather offended.

Q. You had already seen Mr. Williams, had you not? A. I had not.

Q. You had not talked to Mr. Williams prior to the time you talked to Mr. Black?

A. I think I did. I think he came at noon just before I got Mr. Black, with the bills. I believe he did.

Q. He had in his possession signed invoices, did he not?

A. He had the invoices which are represented here.

Q. He had Job Order 678 signed and approved, didn't he?

A. As far as the work is concerned, yes.

Q. So that you had an itemization of the work, did [345] you not?

(Testimony of Demetri Antippas.)

A. It was not itemized to my satisfaction. I still repeat what I said before, that this bill was not satisfactory as far as the thing was concerned. I wanted more information on certain items.

Mr. Hokanson: No further questions.

Redirect Examination

By Mr. Howard:

Q. Mr. Antippas, when this matter was referred to our firm to represent you in this action, did you advise us that you were claiming damages because of the breakdown or inadequate repair of the Clayton boiler?

A. Not at that time.

Q. When did you first advise us of that?

A. After the breakdown occurred, while the vessel was at sea. I don't remember the exact date, but I think it was two or three weeks after the ship sailed and after we advised your firm to undertake this matter for us.

Q. It was before the date that counsel has mentioned in March of 1949?

A. Yes, definitely before.

Q. Do you know why that item was not included in the cross-libel as originally prepared?

A. I believe we did not receive the information on [346] it until then of the cost and what was done.

Mr. Howard: At this time, if the Court please, I would like to let the record show that a motion for production of documents was filed on behalf of the claimant and cross-libelant on March 28, and as one

(Testimony of Demetri Antippas.)

of those items, we requested item 4, any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to respondent vessel on each item of the contract and/or extra specifications. That, among other things, was requested.

The Court: With what result? Did the Court grant your request?

Mr. Howard: By agreement with counsel, we were allowed to examine what documents were then available. The Libelant was then unable to produce for us any breakdown or analysis of the time of workmen and supervisors that went into this job on either the contract or the extra work.

The Court: What point is made of that now? Now they can do it and then they couldn't, is that your point?

Mr. Howard: That is correct. This witness has been asked whether any such information was ever requested of the libelant.

Mr. Hokanson: May I be heard, Your Honor?

The Court: You may. [347]

Mr. Hokanson: I don't know what Mr. Howard proposes to establish by his statement at this time, but pursuant to that request contained in the motion, we made every effort to cooperate and furnish, if the Court please, all of the records, supporting data that have been introduced in evidence in this case to date, save and excepting an analysis based upon those detailed records.

(Testimony of Demetri Antippas.)

The Court: What analysis? Where is it?

Mr. Hokanson: The analysis I have reference to is Mr. Harper's computation. It has been introduced in evidence as Libelants' Exhibit 12. If the Court will examine the motion to produce, No. 4 thereof merely requests any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel, which we fully furnished.

The Court: Did you furnish them a copy of 12 as soon as it was prepared, or at a reasonable time thereafter?

Mr. Hokanson: We undertook the preparation of it, Your Honor, at about the time that the request was made on us to produce these documents.

The Court: Did opposing counsel ever have the benefit of the information in 12 until it was [348] identified as an exhibit in this case? Did he know anything about its contents before that time?

Mr. Hokanson: He had access to the same records we did from which that analysis was made.

The Court: But not the analysis which your clients made?

Mr. Hokanson: I myself, Your Honor, did not have the benefit of that analysis until at least a few hours before the time that this trial commenced, because it involved a detailed, extensive study of those documents before it could be made up properly.

The Court: Being myself not entirely clear as

(Testimony of Demetri Antippas.)

to what the purpose of the statement was, I think it proper to say that doubtless respondents had the same opportunity and capacity for making studies of the nature similar to that of Exhibit 12, the same as libelants had.

You may proceed.

Mr. Howard: I have no further questions.

The Court: Is there any further cross-examination?

Mr. Hokanson: No, not at this time.

The Court: You may step down.

(Witness excused.)

The Court: Call respondent's next witness.

Mr. Howard: Mr. Williams. [349]

HARRY F. WILLIAMS

called as a witness by and on behalf of respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

The Court: You have been previously sworn and may resume the stand. In this connection, it might be convenient for you to state your name.

The Witness: Harry F. Williams, 2553 Bedford Avenue, Brooklyn, New York.

Q. You have already testified as to your employment? A. Yes, sir.

(Testimony of Harry F. Williams.)

Q. Will you state what your arrangement was with Mr. Antippas and Compania Naviera Limitada as to your representation of that company on this particular assignment on the tanker *Urania* at Winslow?

A. I think it was in July that Mr. Antippas sent for me to come to his office and discuss the possibility of buying this YO 73, and I accompanied him to Seattle. We examined the vessel and noted its defects and drew up a brief summary of what would be required to make it a merchant tanker. We returned to New York, and he instructed me to [350] correspond with the Union Diesel Engine Company about the price of the different parts that we found necessary to install to pass the classification society. Also, we noted conditions of the hull, the furniture, and we went up to Sparkman & Stevens and looked over another conversion that was done by the Sinclair Oil Company, and Mr. Antippas instructed us to draw up a set of specifications for lengthening this vessel for the classification society, which Sparkman & Stevens did.

I didn't hear from Mr. Antippas again until about the month of August, when he informed me that he had bought the vessel or was about to buy the vessel, and wanted me to go to Seattle with him. I couldn't go that day, so I came a little later.

Q. Handing you Respondent's Exhibit A-4, can you identify that document?

A. This is the specifications drawn up by Spark-

(Testimony of Harry F. Williams.)

man & Stevens with the set of drawings.

The Court: Are those the specifications referred to in your phrase, "He instructed us to draw up specifications"?

The Witness: That's right.

The Court: By "us" in the former statement, you meant your firm?

The Witness: Meaning the firm. [351]

Q. Were those specifications drawn by your firm in conjunction with Sparkman & Stevens?

A. By discussions together, yes. They were drawn up by Sparkman & Stevens in my presence, and we passed back and forth different opinions. Mr. Antippas and I went up to the drawing office and we made different alterations that suited our condition.

Q. What did you do with those specifications after they had been completed?

A. I brought them down to Mr. Antippas and then he came here, purchased this vessel, and as the testimony says, I wasn't here then. He put it out for bid and he sent for me, and I came the day that the bid was opened.

Q. Are you referring to the date on August 4th or 5th?

A. August 4th or whatever it was.

Q. At that time, what instructions did you have from Mr. Antippas as to your authority to act for him in connection with the repairs on the tanker Urania at the Winslow yard?

(Testimony of Harry F. Williams.)

Mr. Hokanson: May it please the Court, I now object to the question on the ground that this witness is not competent to testify as to what authority he was granted by Mr. Antippas with reference to this work, and that the best evidence of what that authority [352] was exists in the form of statements made by Mr. Antippas, the principal here representing the claimant corporation. My objection further goes to this line of questioning on the ground that his authority is evidenced by written instruments which have already been introduced in evidence, and the parol rule stands in the way of testimony now relating to his authority.

The Court: The last objection only is deemed by the Court appropriate and pertinent. What have you to say, Mr. Howard?

Mr. Howard: I would like to inquire from counsel as to what instruments he is referring to now in the record which show the authority.

Mr. Hokanson: Libelants' Exhibits 4, 5 and 6, Your Honor, which bear the signature of Mr. Williams as owners' representative, signed invoices for Job Order 678.

The Court: Do those exhibits show any statement from the owner as to what this witness' authority was?

Mr. Hokanson: They do not, Your Honor.

The Court: Those exhibits were made by libelants? They were not made by the owner?

Mr. Hokanson: That is right.

(Testimony of Harry F. Williams.)

The Court: The objection is overruled, provided, however, that counsel for libelants may bring to the [353] Court's attention at this time or later any written document which purports to express the terms of employment and the scope of authority of the agency of this witness, and the Court will reconsider this question if any such is called to the Court's attention. Until then, the objection is overruled.

A. His instructions to me was to see that this vessel went through the repairs, and he also gave me authority to order any item that is necessary to bring this tanker to a merchant marine standard.

Q. Did you have any instructions from Mr. Antippas as to your authority to approve the accounts for work performed?

A. Not at that time, because there was no accounts involved.

Q. You say that you had no instructions at that time as to authority to approve accounts. Had you had any previous instructions?

Mr. Hokanson: I object to that, Your Honor, on the same grounds that I have previously objected on.

The Court: The objection is overruled.

A. It is customary, when a shipowner hires a surveyor——

The Court: That is not a direct answer. Answer it directly. [354]

A. No.

Q. Did you have any subsequent instructions

(Testimony of Harry F. Williams.)

from the Compania Naviera Limitada or Mr. Antipapas as to your authority to approve the accounts for extra work on the tanker Urania?

Mr. Hokanson: Objected to as leading, in its present form.

A. Not in this area, I didn't.

The Court: What do you mean by "this area"?

A. I worked with Mr. Antipapas in the East, and there was an entirely different arrangement. We were closer together. I could be within an hour's reach of him, or two hours at the tops, and financial settlements were somewhat arranged different than was required here. In other words, he had an established credit in the yards we worked in.

The Court: Did you intend to say in answer to Mr. Howard, within the last two or three questions, that you had in connection with the repairs on the Urania no authority to approve the accounts for those repairs? A. At that time.

The Court: During the time they were being made?

A. That's right.

Q. Did you have any authority to approve [355] the accounts for the extra work at the time the invoices were presented to you on October 9?

A. To a reasonable amount, but anything that was in excess, I would have to phone him and inform him so before I would have permission to put that work in hand.

(Testimony of Harry F. Williams.)

Q. That was as to the approval of the amounts?

A. That's right.

Q. Going back to the original conference on August 4 at Seattle, were you present in the Commercial Ship Repair office at the time this work was discussed with Mr. Black and others of Commercial Ship Repair? A. I was.

Q. Was any mention made at that time of the Commercial Ship Repair yard requiring progress payments during the course of the work?

A. No, sir.

Q. At any time after that was the question of progress payments discussed with you by representatives of the yard?

A. After I was over at Winslow and they worked for a while and there was extensive extras ordered, I believe Mr. Harper approached me first and says, "Would it be possible for you to get in touch with your owners and ask them for a progress payment?"

Q. And what did you do after that? [356]

A. I suggested, "How much do they think they would need?" So he asserted the sum of \$30,000, I think, and I said, "All right, make a progress payment bill and we will mail it to New York to Mr. Antippas."

Q. On October 8, when these invoices were presented to you, Libelants' Exhibits 4, 5 and 6, what if anything was said by you at that time as to approval of the amounts charged for extras and spare parts?

(Testimony of Harry F. Williams.)

Mr. Hokanson: May the record show my objection to the witness' testifying to anything that was said which might vary or contradict his writing or the signature which he placed upon these documents?

Mr. Howard: I am agreeable to that continuing objection in the record, if the Court please.

The Court: The objection is overruled.

Q. Did you understand the question?

A. I understand the question. These documents were made up the night before and the morning that I was going to New York to see Mr. Antippas because there was a strained relation there and I knew it, and I didn't want to hold the ship up, and I signed these documents passing the work.

Prior to this time, I had a talk with Mr. Featherstone and I think Mr. Lindgren—I am not sure whether it was Mr. Lindgren or Harper, one of them, in fact, both together—and I questioned some of the items as high, but [357] knowing shipyard practices, their books weren't all together because they couldn't work that fast, I signed these and left some copies with Mr. Lund at General Steam. One reason I did that was because the General Steam had been paying our bills and Mr. Lund would have had to have any approval before he went on, but it was also understood that I would have to present these bills to Mr. Antippas. Naturally, he didn't give me carte blanche to his pocket-book and spend his money that fast.

(Testimony of Harry F. Williams.)

Q. What was said to Commercial Ship Repair with respect to the approval?

A. Mr. Featherstone at that time said if 75 or 80 per cent of this bill would have been paid, he would have played ball with us and we could have negotiated any dissatisfaction in prices afterwards.

Q. At that time, did you express any dissatisfaction with the prices?

A. I did, to Mr. Lindgren. I considered some of them higher than I really anticipated them to be, but we couldn't reasonably negotiate any price with his books not up to date, because the work progress was faster than his bookkeeping, naturally.

Q. At the time you signed Libelants' Exhibits 4, 5 and 6, did you advise representatives of Commercial Ship Repair that you were not approving the amounts for the charges? [358]

A. I don't know for sure whether I did. I may have said it, I may not have.

Q. Did you have something more to answer?

A. Exhibit 4, in my way of thinking, is not an invoice. It is simply a rewrite on the general contract, and all big yards don't put the prices on the rewrite because they do not want their employees to see the amount of money transacted in the deal. So I don't think that No. 4 should be taken as an invoice. No. 5 and 6, yes.

Q. Let's look at Libelants' Exhibit 4. Did you advise Commercial Ship Repair at that time that

(Testimony of Harry F. Williams.)

you were approving the amounts of the charges shown on that exhibit in behalf of the shipowners?

A. Exhibit 4, I am approving the work in its entirety.

Q. Did you advise Commercial Ship Repair that you were approving the amounts of charges shown on that exhibit?

A. I may have and I may not have. I am not positive.

Q. What if anything was said to representatives of Commercial Ship Repair at that time as to your opinion as to the reasonableness of the charges?

A. I thought that some of the items was a little high. [359]

Q. Did you advise them how much you thought was high?

A. I said approximately \$6,000 or \$7,000 too high. I informed Mr. Black and Mr. Lindgren and all of them, but Mr. Featherstone at that time made the assertion that if he had 80 per cent of the bill he would play ball with us and sit down and settle the bill fair and square.

Q. Was any breakdown of labor and materials furnished to you or promised to you at that time?

A. At that time there was none, and that is why he could not deal with this bill in its entirety, because his bookkeeping was always behind, as in any other shipyard.

Q. Refer again, please, to Libelants' Exhibit 4. Will you state what particular items on there you

(Testimony of Harry F. Williams.)

considered contained excessive charges?

Mr. Hokanson: I object to the question, your Honor, involving an issue here that the opinion of the witness as to what he considered to be excessive is foreclosed by his signature on the document, which he has already stated he regarded as approving the amounts.

Mr. Howard: I am sorry, counsel, I didn't understand his testimony to be to that effect.

The Court: This is a part of the same objection of the nature previously noted, is it not, barring a written instrument by parol testimony? [360]

Mr. Hokanson: He is asking for the witness' opinion. I suppose he is competent to give it. I will withdraw it on that basis.

The Court: The objection is overruled.

A. I claim that items 1 and 2 and 3 were debatable. That is, we wanted to know some reason for the excess cost by a breakdown.

Q. What did you consider to be the excess charge on item No. 1?

A. Well, it pertained to the engine mostly, and due to the fact that our crew did most of the work on the engines and the yard's performances there was, in my opinion, shop work, testing, rigging, etc., I thought that it was a little high, about \$1500 high, that one item, but they had no way of determining at that time, and I will still have to repeat that it was open to negotiation.

Q. Refer, please, to item 2.

(Testimony of Harry F. Williams.)

A. The same would apply to item No. 2.

Q. What excess charge do you believe was involved in that item?

A. Item 2 comprised mostly piping, heating coil lines, and the entire deck and the guards over the deck. It being a small ship and \$7930 was the total item, I figured about \$1800 should have been taken off that item, but that was also negotiable, and full accounts wasn't in the office. [361]

The Court: May I interrupt you to ask what you mean by saying those items which you are now discussing involved work done by members of the ship's crew?

The Witness: The ship's crew did the engine work in item 1.

The Court: Why would any charge be made to the owners for work done by the ship's crew?

The Witness: The shipyard furnished us machinists and for its machinists they charged in that item. The hours weren't complete. The shipyard took these different valves up to the shop, ground them in, tested them and repacked them and renewed sections of pipe, etc., in the engine room, so there is a lot of men involved here.

The Court: Do you mean that some of the work as to those items was done to some extent by members of the crew of the ship?

The Witness: That is right, sir, and some by the yard.

(Testimony of Harry F. Williams.)

Q. Refer back to item 1 of Libelants' Exhibit 4, please. Will you check through the items shown on the first page of Libelants' Exhibit 4?

A. What do you want me to check?

Q. When you have checked that, will you state whether the work shown on there was performed by the [362] Commercial Ship Repair yard or whether it was performed by the ship's crew?

A. It was done together. The ship's crew assembled and disassembled; the yard made the improvements up in their shops, brought it back and assisted the chief with men as designated in the item.

Q. Again referring to item 1 of Libelants' Exhibit 4, do you find on there an item "install new liners in five cylinders"? A. Yes, sir.

Q. Who did that work?

A. The Commercial Ship Repair Company, up in their warehouse.

Q. Who installed the cylinder liners in the engine?

A. The Commercial Ship Repair machinists, up in their warehouse.

Q. Who installed the liners on the engine aboard the vessel?

A. The Commercial Ship Repair Company lowered them into place and assisted the engineer to bolt them.

Q. Another item under item 1, "furnish labor and material to pull main engine cylinder liners."

(Testimony of Harry F. Williams.)

Who did that work?

A. The Commercial Ship, because we didn't have the strong backs and facilities to do it. [363]

Q. Another item, "furnish labor and material to disassemble camshaft." Who did that work?

A. The crew, with the assistance of Commercial Ship's riggers.

Q. Why was that item left in the specifications if the crew did the work?

A. Because they were involved in there. The Commercial Ship engineer was there because the marks had to be taken off this camshaft so we had the proper timing of the valves when they were brought back, and it was done for the American Bureau for classification.

Q. Referring to the last item under item 1 of Libelants' Exhibit 4, "furnish labor and material to repair circulating system of main engine as necessary," who did that work?

A. The chief engineer had some Commercial Ship machinists working for him, and he also had his crew working for him. The cleaning gang of the yard had something to do with flushing the jackets out and the pipes out, and the pipefitters of the yard had to renew sections of pipe that were frozen or wasted, and the coolers in this particular case were taken off and brought up to the shop.

Q. To whose shop?

A. To the Commercial Ship Repair shop, were steamed out and I believe tested, and witnessed by

(Testimony of Harry F. Williams.)

Mr. Gallagher of [364] the American Bureau.

Q. Did that include the lubricating oil cooler?

A. The lubricating oil coolers were cleaned out, too. The pipefitters assisted our crew in that work.

Q. Who took the lubricating oil cooler off the ship? A. The riggers, naturally.

Q. Will you refer to item 3 of Libelants' Exhibit 4, please, and state what if any excess charge is included in that item?

A. I thought that that was about \$500 too high. That is my opinion, now, but I didn't see the breakdown.

Q. How about item 4? A. It is okay.

Q. How about item 5? A. Okay.

Q. Item 6?

A. Item 6 is an electrical item, and there is also electrical items in the main contract, and there is electrical items in installing the direction finder in the ship-shore telephone. Something on the electrical work I did pass an opinion that that was high, but I did not see the breakdown on that.

Q. Did you feel that the charge under item 6 of \$2205 was a proper charge?

A. I thought it was very high for what it was, a small [365] fresh water pump motor, two air compressor motors and a fire pump and bilge pump motor which they took up to the shop, baked out, repainted with insulation paint, and the small generator. \$2200 for that kind of work without any renewals I thought was a little high, \$1000 or

(Testimony of Harry F. Williams.)

\$1200 high, for that matter.

Q. How about item 7? Do you consider that charge okay? A. Okay.

Q. Item 8? A. Okay.

Q. Item 9?

A. My owners question item 9, which they justly should, because this pertains to rigging the shrouds and the mast, which is in the main contract, but it reads in the main contract—I haven't got that here, but about all renewals to be paid by the owner. Mr. Antippas has bought many sheaves and sheave blocks and single sheaves, and I consider the item——

The Court: Spell the word sheave.

The Witness: S-h-e-a-v-e, a sheave block.

Q. Please state what you considered to be the case as to whether item 9, a charge of \$492, was reasonable.

A. I would rather price this material furnished, and that was all that was done. There is 7 sheaves, a 1/2 inch [366] wire topping lift and a 1/2 inch wire purchase fall, and 5 11/8 galvanized anchor shackles. I would like to know the price of that before I pass an opinion, because I am directed to do that by Mr. Antippas.

Q. Were any prices for those items furnished to you by Commercial Ship Repair?

A. No, the bills were not in. I got out of there in a hurry, see.

Q. Passing now to item 10, how about the charge

(Testimony of Harry F. Williams.)

for that item? A. It is perfect.

Q. You are satisfied with that?

A. Yes, sir.

Q. Item 11? A. Satisfied.

Q. How about the charge on item 12?

A. Perfect.

Q. How about the charge on item 13?

A. They furnished a spool piece on the whistle and raised the whistle, and I would question the price of the spool piece because they built the powerhouse, and I think it was \$90 too high.

Q. What is the total charge? A. \$158.

Q. You thought it was \$90 too high? [367]

A. That is right.

Q. How about item 14, relating to the heating boiler? Is that the Clayton boiler?

A. That is the Clayton boiler.

Q. And the charge on that is how much, please?

A. \$5875.

Q. Did you consider that to be a reasonable charge?

A. I consider that a reasonable charge because they installed it and built it and insulated it.

Q. Item 15, is that a reasonable charge for that work? A. Yes, sir.

Q. Item 16, the same question?

A. Yes, sir.

Q. Item 17? A. Okay.

Q. 18? A. Okay.

Q. 19? A. Okay.

(Testimony of Harry F. Williams.)

Q. 20? A. All right.

Q. 21?

A. 21 is lifeboat labor, work on the lifeboats.

Q. What is the amount for that item? [368]

A. \$1074.

Q. Did you consider that to be a reasonable charge?

A. I thought that was a little high for what they did. They only furnished two spreaders and a canvas top, and of course they promised to show me the cost of the mast, etc.

Q. Did you ever see the charges of the shipyard on that?

A. Not up to now. I didn't see a recapitulation until yesterday. \$874, I marked it, and it is \$1074 on the bill.

Q. You thought it was \$200 too high?

A. That is right.

Q. As to item 22, did you consider the charge reasonable? A. Yes, sir.

Q. 23, same question? A. Yes, sir.

Q. Item 24, same question?

A. The vents in the poop deck, in the main deck, ABS requirements.

Q. What is the amount for that item as shown in Libelants' Exhibit 4?

A. \$585. I think we figured that \$485 in my firm's notes. I think it was \$100 in excess of what we had [369] estimated.

Q. Item 25, did you consider the charge for that

(Testimony of Harry F. Williams.)

work reasonable?

A. Not for the amount of work there. They charged us \$685, and I think I took off \$100 and made it \$585.

Q. What did that item involve?

A. That was a requirement to ventilate the pump room, because we made a structural change on the bridge. We had to reinstall the new duct and a fan and rewire it so that the pump room would have proper circulation of fresh air. 26, all right.

Q. On item 25, I understand you to say that that charge was \$100 too high? A. It was.

Q. Item 26? A. Okay.

Q. Item 27? A. All right.

Q. Item 28? A. All right.

Q. Item 29? A. All right.

Q. Item 30? A. Okay.

Q. Item 31? [370] A. All right.

Q. Item 32?

A. Item 32 comes on the main contract again, and it was an additional awning spreader that they charged \$345. I thought that was a little high.

Q. How much high? A. \$100.

Q. Item 33, how about the charge for that work?

A. That was a very good job, very reasonable price.

Q. You are satisfied with the price?

A. Absolutely.

Q. How about item 34? A. All right.

Q. Item 35? A. All right.

(Testimony of Harry F. Williams.)

Q. Item 36?

A. According to estimate—the price is \$660 on here—according to the estimate, it was only \$600.

Q. What work was involved in that item?

A. They furnished material to fabricate and install storage racks along the starboard side of the catwalk.

Q. How many racks were installed?

A. About six, and then two underneath is eight. This covered the ship. The grammar is not right in here. It was all the hose racks that was necessary for the [371] requirements of classification. It was \$60 too high. \$600.

The Court: I didn't get the relationship of the last two figures used by the witness. First he said it was \$60 too high and then he used the term \$600.

The Witness: That is the total, sir.

The Court: So it is \$60 too high?

The Witness: That's right.

Q. What is the total charge shown in Exhibit 4 for item 36? A. \$660.

Q. What excess charge did you consider to be in that item? A. \$60.

Q. What would be the reasonable charge for that item? A. \$600.

Q. Refer to item 37. Are you satisfied with that charge?

A. The owners would like to see the price of those swivel chairs. They charged us \$175 for eight

(Testimony of Harry F. Williams.)

swivel chairs.

The Court: Your statement is not responsive. He asked you what your view was.

The Witness: In my view, the price of \$175—but I have been asked to get a price on the chairs. I haven't done it.

Q. You have no opinion, then, on the reasonableness [372] of that charge until you have seen the prices?

A. I could not give an opinion because I do not know the cost of the chairs.

Q. Item 38, a charge of \$275?

A. I think it was very fair.

Q. Item 39? A. Okay.

Q. Item 40? A. Okay.

Q. Item 41? A. All right.

Q. Item 42? A. All right.

Q. Item 43? A. All right.

Q. Item 44? A. All right.

Q. Referring to item 44, was there any allowance made for salvage on wire or other material removed from the tanker *Urania* by the shipyard?

A. There was no allowance made because it wasn't specified, and the practices of shipyards, all scrap becomes the property of the shipyard.

Q. Item 45? A. All right. [373]

Q. Do you know what the charge was for the starting motor furnished by the shipyard under item 45?

A. I think I saw the bill for that.

(Testimony of Harry F. Williams.)

Q. Do you know what the charge was for that motor, the purchase price?

A. Not offhand. They have billed us for \$195, and I think there is 10 per cent on that for handling. They did not show me the bill.

Q. Referring to item 46, I will ask you the same question as to the charge of \$450. Did you consider that a reasonable charge?

A. The original price on the item was \$450, but the item was not done in its entirety, so I figured a \$200 deduction which would make the item \$250, would be reasonable.

Q. As to item 47, there is a charge——

The Court: I do not understand his conclusion as to whether 46 was reasonable or not.

The Witness: 46, the original cost was \$450, but the item in its entirety wasn't done, so we took off \$200, which made it a total of \$250.

The Court: How much too high, if it was too high?

The Witness: \$200 too high, but that wasn't their fault. They didn't finish their job, we stopped them.

Q. Did you consider that the charge of \$450 was too [374] high for that item?

A. If they had done the job it would have been right, but they didn't do the job.

Q. What do you consider to be a proper charge for the work performed under item 46?

A. \$250.

(Testimony of Harry F. Williams.)

Q. Item 47, and the charge of \$225?

A. That was cancelled because it wasn't done.

Q. Should that charge be left in Exhibit 4?

A. That should be eliminated, deleted.

Q. The work was not performed?

A. That is right.

Q. Item 48? A. All right.

The Court: How much is included in the account respecting item 47?

The Witness: \$225, but the item should have been deleted, because we didn't go through with it. The chief changed his mind.

The Court: That was one of the extras, was it, which was originally ordered but finally abandoned before the work was done?

The Witness: Yes, sir.

Q. Will you please refer to Libelants' Exhibit 6 and the last page of that document? That is the invoice for the [375] spare parts furnished to the tanker by the libelants' yard?

A. That's right.

Q. Do you find an item on the last page dealing with spare boiler coils?

A. Where is it? What is the amount of it?

Q. \$900.

A. I see that. That shouldn't have been there.

Q. Why not?

A. Because that should be the boiler complete with a spare.

Q. What relation does that item in Libelants'

(Testimony of Harry F. Williams.)

Exhibit 6 have to item 14 in Libelants' Exhibit 4?

A. That should have been the spare that went with the boiler, as we agreed to do it.

The Court: I think counsel in asking the question is trying to bring out whether or not it is one and the same item.

Q. I will ask the witness, is there any duplication between the charge shown in item 14 of Libelants' Exhibit 4 and the charge of \$900 appearing on the last page of Libelants' Exhibit 6?

A. I think that should be taken out of the spare parts, and it belongs with the \$5875. I think that was a mistake of the yard, calling that a spare.

Q. Please answer the question. Is there [376] any duplication between those two charges. Is the item of \$900 on the last page of Libelants' Exhibit 6, in your understanding, included in the charge of \$5875 appearing under item 14 of Libelants' Exhibit 4?

Mr. Hokanson: I object to the question, your Honor, in that it is leading and he is asking the witness' opinion as to whether it is included there, and the writing speaks for itself.

Mr. Howard: I asked his understanding.

The Court: The objection is overruled.

A. Item 14——

The Court: I think you should answer yes or no.

A. No.

The Court: It is not the same?

(Testimony of Harry F. Williams.)

A. It is not the same.

Q. Referring to the item of \$900 on Libelants' Exhibit 6 for spare boiler coils, did you consider that to have been a proper charge under your understanding of the work and material that was furnished to the tanker by the libelants' yard?

A. I think it was a mistake. It shouldn't have been there.

Q. Why not?

A. Because we agreed to have a spare coil with that boiler. [377]

Mr. Hokanson: I think the witness should be required to state who agreed.

The Court: Did you agree that the yard would furnish the extra coil without charging you?

The Witness: That is right.

The Court: State whether or not the libelants so agreed at a specified price, and then name it.

The Witness: We agreed on a price of \$5875 for the heating boiler with a spare coil.

The Court: What were you charged for the boiler?

The Witness: \$5875.

The Court: In addition, you claim you were charged something for the spare coils, namely, \$900?

The Witness: I think it was a mistake in the entry in the books. I don't think they intended to put that there. It shouldn't be there, it should be deleted.

(Testimony of Harry F. Williams.)

Q. Why shouldn't it be in there?

Mr. Hokanson: I object to this question. It is leading and asks the opinion of the witness.

The Court: The objection is sustained. I understand what he said.

The Witness: It shouldn't be there.

The Court: He has explained why it shouldn't be there. What was that over-all price for the boiler with spare coils? [378]

The Witness: The boiler itself was \$5875, sir.

Q. At the time these invoices and Libelants' Exhibit 4 were presented to you by the libelants' yard on October 8 for signature, did you express to them, to the representative of Commercial Ship Repair, your objections to the charges?

Mr. Hokanson: Objected to as repetitious.

The Court: That is sustained.

Mr. Howard: I have no further questions.

Cross-Examination

By Mr. Hokanson:

Q. You state with respect to item 14 that you agreed to the price of \$5875, is that correct?

A. Where is that 14?

Q. No. 14 on Exhibit 4. A. That's right.

Q. With whom did you make that agreement?

A. Mr. Featherstone, when we talked about the boiler.

Q. Did you have authority to enter into an agreement as to price on that item?

A. He gave me the price and I called Mr.

(Testimony of Harry F. Williams.)

Antippas in New York and told him it was going to cost him \$5875 for his boiler with spare coil. He said, "What else can we do? Go ahead with it."

Q. You have testified as to Exhibit 4 that [379] in various places, that the item was agreed at such and such a price, but that in your opinion it is too high. Did you in each case arrive at an agreed price where you have stated the item is too high?

A. No, we didn't arrive at an agreed price. We left it open as per our conversation. I took the invoices as they were, signed them, left some with General Steam, and I flew to New York to see Mr. Antippas, because I knew the ship was about to get into difficulty and I didn't want to retard the sailing of the ship. Mr. Featherstone left that open to me and Mr. Black did, too, if a reasonable amount was paid we could have negotiated these prices afterwards, which we could have done.

The Court: What do you mean by the phrase, "I knew the ship was about to get into difficulty?"

The Witness: Mr. Featherstone told me we couldn't take the ship from the yard unless a financial settlement was made some way or other.

The Court: Was anything said about the possibility of libeling the vessel in court?

The Witness: They told me they intended to hold the vessel.

The Court: Specifically, was anything said about

(Testimony of Harry F. Williams.)

libeling the vessel in court?

The Witness: They said they would libel the vessel [380] rather than let it go unless financial arrangements were made to cover their bill.

The Court: What date was that?

The Witness: They told me that just before the sea trial.

The Court: What date was that?

The Witness: You will have to help me on the sea trial date.

The Court: October 4th or 6th? Mr. Howard used both dates in his question.

Mr. Hokanson: Mr. Antippas testified it might have been October 4th or 6th, your Honor.

Mr. Howard: The record will show it was October 6th, your Honor.

Mr. White: I have the log of the shipyard.

The Court: Is that in evidence?

Mr. White: It is not.

The Court: Is there any objection to reading the log entry on that point?

Mr. Howard: I have no objection.

The Court: Read the log entry on that point pursuant to counsel's stipulation.

Mr. White: "Wednesday, October 6, 1948. Urania trial run."

The Witness: It was about October 4 that [381] Mr. Featherstone told me he would not let the ship go out unless there was some security for the bill.

(Testimony of Harry F. Williams.)

Q. Isn't it true, Mr. Williams, that Mr. Black also advised you on or about October 8 before you left that the ship would not be allowed to sail under any consideration unless arrangements were made for payment before sailing?

A. That is right.

Q. Showing you Libelants' Exhibit 7, does your handwriting appear on that document at any place?

A. Yes, it appears on "okays".

Q. That was the work sheet that you and Mr. Lindgren used to talk about these prices, isn't it?

A. No. This is a rewrite used starting to make this (indicating). This shouldn't even be here. That should be in the wastepaper basket.

Q. What does your "okay" signify at various points on the document?

A. The way it is written, the grammar of the item. We added to and took away.

Q. As to prices?

A. Some, yes, some prices.

Q. Some places your signature appears on the figure in the margin, does it not? That is to say, that you wrote the figure in yourself or changed the figure?

A. No, it is all Art Lindgren's figures, I [382] think. Some I took out and some I marked okay, but if you add these figures, they won't make this sum. It is a work sheet. It shouldn't be here.

Q. How close is it to No. 4?

Mr. Howard: If you know.

(Testimony of Harry F. Williams.)

A. I don't know.

Q. If it were established that the total amount listed on that work sheet coincides with the amount shown on Exhibit 4 within \$100 or \$200, would your testimony still be the same?

A. It is still a work sheet. I haven't okayed it all.

Q. But you did sit down with Mr. Lindgren and go over these prices, did you not?

A. From time to time we did, many times. Some we agreed upon, some we didn't, some we left open. His books wasn't up to date so he couldn't positively assert the prices and neither could I.

Q. Then Exhibit 4 does not contain a complete itemization of all the work that was done, does it?

A. That is right.

Q. So that reference to the numbered items would not disclose to you what the total work done on that item was?

A. Not unless I got some from the yard's recap.

Q. And your estimate of the amount in each case as being too high is just your opinion based upon your [383] recollection of what was done with respect to the particular item?

A. That's right.

Q. You heard the testimony yesterday of Mr. Nordstrom, didn't you?

A. I couldn't hear him.

The Court: In what respect?

(Testimony of Harry F. Williams.)

The Witness: We talked too low.

Q. Did you hear the testimony of Mr. Nordstrom with respect to his opinion as to what percentage would be a reasonable profit on a job of this size?

A. I didn't hear Mr. Nordstrom's testimony because I couldn't hear him.

Q. Assuming that Mr. Nordstrom's testimony was that a 20-25 per cent profit on a job of this character—referring now to the extras—was entirely reasonable, would your opinion be the same?

A. I don't care to pass my opinion on that.

Q. Do you have an opinion?

A. Get as much as you can, is my opinion.

Q. In your experience, do you know how profits run on jobs of this type? A. Yes.

Q. Would you say that 20-25 per cent would be comparable with profits made on other jobs of this type? [384]

A. I don't want to pass my opinion about profits in shipyards, because every yard is different and I am not going—I am not an expert on business accountancy, I am an engineer.

Q. But you have expressed an opinion as to the reasonableness of certain amounts listed here on Exhibit 4?

A. That's right, that is my opinion, my practical opinion.

Q. If it were demonstrated to you that after a complete breakdown as to the items that went into

(Testimony of Harry F. Williams.)

Job Order 678 it was shown that the total profit to Commercial Ship Repair was about 13 per cent, would you say still that the amounts listed here are excessive to the amount that you state?

A. I still don't like to answer the question, because I am not—one man can work for \$1 a day and another one for \$50.

The Court: I would like for one counsel or both to inquire of the witness concerning the quality of this work. I understand it was part of his duties and part of his assignment to supervise the doing of the work as well as to give orders for extras. I would like for both sides by appropriate questions to inquire of this witness concerning the quality or standard of this work as actually done. That is one of the [385] important issues in this case. I would think this witness would know something about it.

I don't require that any one of you do it. I suggest to you that that is an important issue in this case, and I believe I recall that the burden is on the libelants in respect to that issue.

Mr. Hokanson: I believe, Your Honor, that Mr. Williams has already testified concerning that, but I would like to again develop it with your permission.

Q. Mr. Williams, you supervised the entire job, both contract and extras, did you not?

A. Yes.

Q. You have been in many shipyards during

(Testimony of Harry F. Williams.)

your 30 or 40 years of experience as a surveyor in maritime matters? A. Yes.

Q. You are able from that experience to judge the competency of work done in a shipyard?

A. That's right.

Q. In your opinion, was this work done in a workmanlike and competent manner?

A. It was.

Q. And you approved all the work upon its completion, did you not?

A. Right, and any dissatisfactory work, they did it over and did it to suit me. [386]

Q. It was also approved, was it not, by Mr. Gallagher of the American Bureau?

A. That was necessary for the classification.

Q. Mr. Gallagher was a disinterested party in the proceedings with respect to testing, was he not?

A. He was interested in the testing, all right, he wanted to see that everything was all right.

Q. But he acts as an independent third party to determine whether the vessel meets the requirements of the Bureau's standards?

A. He is an officer of the classification society and he had passed it the same as we did.

Q. Did Mr. Gallagher express any opinion with respect to the competency of the work that was done?

Mr. Howard: I object to that, if the Court please, as being a request for a hearsay statement,

(Testimony of Harry F. Williams.)

a third party. He is asking for what opinion Mr. Gallagher expressed.

The Court: The objection is sustained. He has already said what he did.

Court is in recess until 1:00 o'clock.

(At 12:05 o'clock p.m., Saturday, April 9, 1949, proceedings recessed until 1:00 o'clock p.m., Saturday, April 9, 1949.) [387]

April 9, 1949, 1:00 o'Clock, P.M.

Q. You observed the supervisors who worked for Commercial Ship Repair on the Urania during the conduct of their work, did you?

A. I did.

Q. What is your opinion as to the competency of the supervisors?

A. They were all pretty good men, all the way through.

Q. Referring to item 1 on Exhibit 4, you previously testified that all of that work was done under supervision of the chief engineer except with respect to the rigging, is that correct?

A. Yes.

Q. With respect to the lowering of the liners into the cylinders, do you know whether any additional work with respect to connecting up those cylinders was done by Commercial Ship Repair independently of the chief engineer?

A. It may have been, the lubricating oiling pipes put back, and some of the bolts hardened by machinists.

(Testimony of Harry F. Williams.)

Q. But it was under the supervision of the chief engineer, wasn't it?

A. As far as the main engine, yes. [388]

Q. Turning to Exhibit No. 4, you state that the original price of that item, No. 46, was \$450. What do you mean when you refer to the original price?

A. The original price was given to build a storeroom on the starboard forward corner of the engine room over the cargo pump motor, and the storeroom deck to be constructed of diamond floor plate, which was not done.

Q. In other words, that was a price that had been agreed upon before the work was undertaken?

A. Yes.

Q. Between you and who else?

A. Perhaps Lindgren; anyway, I was given a price, how much it would cost to build that storeroom locker.

Q. Are you or are you not qualified to express an opinion as to the reasonableness of the price of work done in shipyards?

A. I think I am capable of expressing an opinion on prices in shipyards.

Q. You have negotiated prices during your work over a period of years, have you not?

A. That I have.

Q. And you have previously worked for Mr. Antippas on jobs where you have negotiated the price, have you not?

A. I have negotiated prices with Mr. Antippas

(Testimony of Harry F. Williams.)

in other work. That is to say, he had the final say-so on the [389] price.

Q. If you are qualified to express an opinion as to the reasonableness of shipyard work, can you testify as to your opinion of the reasonableness of a markup on the extra work on the *Urania*?

A. These prices were marked up for a basis to get somewhere, and the final decision wasn't made by the man who was going to pay the bill, that is all. The reasonableness was there.

Q. What I want to find out from you is if you can state what a reasonable price is for a specific item of work in a shipyard, then that must necessarily take into account your understanding of what the markup is over the actual cost of labor and material, isn't that true?

A. That is true.

Q. If the evidence should show that the Commercial Ship Repair in the *Urania* job only had a markup of 12 to 15 per cent on the extra or additional work, would you consider that to be a reasonable markup?

A. I consider it a fair markup, yes.

Q. Isn't it also true that as to the reasonableness of the individual items which you have testified to here on Exhibit 4, it was merely tentative upon a study of the time and material breakdown?

A. That's right. [390]

Q. So that without having the benefit of the actual breakdown of time and material, you were

(Testimony of Harry F. Williams.)

not prepared to make a final statement as to whether those charges that you state were excessive were actually excessive, in your opinion?

A. That is also right.

Q. Referring to Libelants' Exhibit 12, which was prepared by the accountant, Mr. Harper, you will notice that the profit on the extra work and the spare parts was about \$5987. Assuming that Mr. Harper's figures are accurate, would that affect your testimony that you have earlier given that the bill was about \$7000 high?

A. No, it wouldn't affect my testimony, because when I go over it item for item, this is nothing but a recapitulation of your overhead and costs that I haven't had time to study. There is a lot of debate here.

Q. Assuming, though, that the analysis of time and material and stores is accurate, would that affect your opinion as to the reasonableness of the total charge? A. It may.

Q. The total profit shown there represents something around 13 per cent on the extra work done. Is that a reasonable profit on that work?

A. It is a fair profit. It is a reasonable profit.

Q. Part of your duties on a job such as you undertook here for Mr. Antippas would be to keep the cost of the work [391] as low as possible, wouldn't it? A. That is right.

Q. Isn't it true that you objected to the inclusion of the state sales tax on the invoices with

(Testimony of Harry F. Williams.)

respect to spare parts? A. I did.

Q. And it was explained to you, wasn't it, that that was beyond the control of Commercial Ship Repair?

A. We called up a lawyer and found out that it had to be.

Q. Did Mr. Antippas ever tell you to keep the total bill under \$80,000?

A. He never specified any amount to keep it under to me that I know of. He may have said, "Keep it as low as you can," I don't think he ever gave me any designated amount.

Q. So that if he told you to keep it under a certain amount, he contemplated in that statement to you that you would be computing the prices, didn't he?

Mr. Howard: I object to that question because the witness has just testified that Mr. Antippas did not state it be kept to a certain amount.

The Court: He said he didn't remember any such. I believe that the question is not proper conditioning. The objection to it is sustained.

Q. In going over Exhibit 4 again, you have testified [392] that item 47 was not accomplished and should have been deleted?

A. That is right.

Q. Isn't it true that in many instances on this extra work, as you proceeded, Commercial Ship Repair made trades or swaps with you covering various items that had been ordered?

(Testimony of Harry F. Williams.)

A. That's right, they did.

Q. And they extended many courtesies by way of doing special jobs for you which they did not list, isn't that true?

A. They were reciprocated, the courtesies upon both sides.

Q. You have said that in going over the items number by number on Job Order 678, that the great majority of them were "okay", "all right", "very reasonable", in some cases, "perfect". Isn't it possible that in some of those items that you approved the prices might have been very low and might very well have been marked up higher than is shown on Exhibit 4?

A. That is a condition, that is right.

Q. So that it is quite possible that the increase on the prices you have stated to be all right could offset to a great extent the prices that you have stated in your opinion to be high? [393]

A. It is elastic. It could go either way.

Q. Calling your attention to item 14 on Exhibit 4, you will note that the first sentence says, "Furnish and install new heating coils," is that correct?

A. That is correct.

Q. And no mention is made under that item of an extra set, is that correct?

A. That was an omission by the yard. That was understood with Mr. Featherstone and I that this boiler would have the spare coil, which made it a good buy, \$5875.

(Testimony of Harry F. Williams.)

Q. But there is no mention in 14 of an extra set, is there? A. No, there isn't.

Q. Turning to Libelants' Exhibit 6, on the last page, there is listed an item of coils for the boiler in the sum of \$900, is that right?

A. That is right.

Q. Did you know what the reasonable market value of those boiler coils was at the time they were furnished?

A. No, I didn't look that up in the catalog. The boiler is an obsolete boiler and it was just good luck that the boiler parts were around Washington. They don't make that boiler any more.

Q. You examined Exhibit 4 before you signed it, did you not? [394]

A. Yes.

Q. And you examined Exhibit 6 before you signed it, did you not, covering spare parts?

A. I did, in a rush, but may have overlooked some things.

Q. You at that time made no objection to the omission, as you state, of the item of an extra heating coil on No. 14 of Exhibit 4?

A. I didn't know that it wasn't in there, and I wouldn't think and I don't think that the shipyard would trick me into giving me an extra coil or ducking the issue. I think the agreement I made with Mr. Featherstone is fast and sound and the coil should be with the boiler and this should be deleted.

(Testimony of Harry F. Williams.)

Q. From your dealings with Commercial Ship Repair, as you have stated, you were confident that there was no attempt on their part to hoodwink you by putting something in these extras?

A. No, they wouldn't do it intentionally.

Q. In other words, you think that was an error?

A. I do.

Q. Isn't it true that Mr. Antippas never delineated any limitation upon your authority in connection with the job done at the shipyard at Winslow?

A. As far as the work and ship construction was [395] concerned, he gave me full power to get the ship.

Q. He never stated any limitation upon your authority in the presence of any representative of the shipyard, did he? A. I don't think so.

Q. Would you like, before giving a final opinion as to the reasonableness of the extras, to study further Exhibit 12 and supporting documents?

A. That will take me quite a while.

Q. I will withdraw the question. Didn't you first make the negotiations from New York covering certain spare parts for the main engine?

Mr. Howard: Objected to as repetitious.

The Court: Are you sure you haven't gone into this already?

Mr. Hokanson: I don't believe with this witness, Your Honor.

The Court: You may inquire. The objection is overruled.

(Testimony of Harry F. Williams.)

A. I said in the early part of my testimony the conditions that we went into from New York. I wrote for the catalog to the Union Diesel, and we priced it, and Mr. Antippas knew the price of the things, and we were instructed then to order it through him and his office.

Q. You ordered parts yourself from Union Diesel after you were out here, didn't you?

A. Yes, I did.

Q. With respect to Exhibits 4, 5 and 6 which bear your signature, you were free to note any objection to the amounts thereon before signing them, were you not?

A. I was, but at the time I wanted to get them to Mr. Antippas and let him settle them. After all, he had to pay them, he is entitled to look at something and object, and from then on I would have to be instructed what to do.

Q. You have mentioned in your direct testimony that you were aware of strained relations existing about a week prior to your departure. What did you have reference to in that connection?

A. As the ship was nearing completion, I was told that I couldn't go out on the trial trip unless some financial arrangements were made, and I knew then that it was necessary to get hold of Mr. Antippas in order to carry out the work.

Q. What was the reason for the objection to the trial run and who made it?

A. Mr. Featherstone at first thought that if he

(Testimony of Harry F. Williams.)

would allow me to take the ship out on the trial run, I might get over to Canada and forget to come back.

Q. In view of the information that you had concerning Commercial Ship Repair's attitude toward the payment of this bill, did you communicate that to Mr. Antippas? [397] A. I did.

Q. So that he had knowledge of Commercial Ship Repair's intentions concerning holding this vessel unless the bill was paid?

A. I think Mr. Antippas was so informed.

The Court: On or prior to what date, if you know?

The Witness: It was in September, 27th or 28th, somewhere in there. I don't know whether it was Saturday or Sunday.

Q. Did you tell Mr. Antippas that the ship would be libeled by Commercial Ship Repair if the bill was not paid prior to sailing?

A. I told him that they would not allow the ship to go, because even at a late date, Mr. Featherstone said if he would pay 80 per cent of the money, he would play ball, so I didn't use the word libel.

Q. Were you directed to leave Winslow and go to New York by Mr. Antippas?

A. That I am not sure of. I think I went in the best interests of all concerned. I thought I would get the ship out quicker by bringing these invoices to New York, and it was unfortunate that we didn't meet in time before the ship was libeled.

(Testimony of Harry F. Williams.)

Q. Did you have an appointment with Mr. Antippas in New York Monday morning, October 11, prior to your leaving [398] Seattle?

Mr. Howard: Objected to. I belive that is repetitious, if the Court please.

Mr. Hokanson: I think the testimony was that he met with him on Saturday, the 9th, and I am trying to establish whether he had made this appointment prior to his leaving Seattle.

Mr. Howard: This witness was called by the libelants as their own witness. At that time, I believe they went into the subject fully.

Mr. Hokanson: I don't recall, Your Honor.

The Court: Was that the time when you think this witness testified he saw Mr. Antippas in the restaurant?

Mr. Howard: That is my recollection, going back to when he was examined.

The Court: This witness has at least once, if not more than that, testified about seeing Mr. Antippas in the restaurant. Mr. Antippas also testified to that. It was on Saturday night, I think.

Mr. Hokanson: Yes, Your Honor, but my question relates to whether an appointment for Monday was made prior to the time Mr. Williams left Seattle.

The Court: If that is the point of it, you may inquire. Read the question. [399]

(Last question read by reporter as follows:

“Q. Did you have an appointment with Mr.

(Testimony of Harry F. Williams.)

Antippas in New York Monday morning, October 11, prior to your leaving Seattle?")

Q. If you know.

A. I don't know, because it is a corporation. I would have seen his brother or him or somebody else. I went to New York there for results, and I didn't have an appointment before, no, sir.

Q. To refresh your recollection, didn't you advise Mr. Black in his office on Friday, October 8, in Seattle that you had an appointment with Mr. Antippas Monday morning, October 11?

A. I may have said that, yes.

Q. In your testimony on direct examination concerning the amounts and the reasonableness thereof in each case on Exhibit 4, were you testifying from certain notes?

A. I was testifying from a duplicate of 4, which I have marked in my figures.

Q. And those were your own notes?

A. That is right.

Q. Made when, sir?

A. I don't know. I had another one, I think I recopied it. I made notes some time ago, but it was after the ship left, after I left. [400]

Q. Is it your experience on repair work under circumstances similar to those which obtained in the case of the repairs to the *Urania*, where the chief engineer of the vessel was in charge of repairs to the engine and where upon completion of the repairs and conversion the vessel is approved

(Testimony of Harry F. Williams.)

after sea trial by the American Bureau of Shipping and by the surveyor hired by the owners, that the responsibility for any subsequent defect in the operation of the vessel after it is surrendered to the owners does not rest with the yard which perfected the repairs?

Mr. Howard: That question is certainly quite indefinite, if the Court please, and calls for an expression of opinion by this witness, something he may not be qualified to answer. I object to the question for that reason.

The Court: Is it properly within the scope of the examination?

Mr. Hokanson: I believe there is in issue here the question of the quality of the repairs and whether the work was properly done. The question of the quality of the workmanship is involved, Your Honor, and to that end I ask the question.

Mr. Howard: I don't believe that subject was opened up on direct examination of this witness at this time when he was called to the stand by the claimant, the quality of the work.

The Court: The objection is sustained, for one reason or another. I will not undertake to state the reason. First, you should develop his experience in determining such questions. It seems to me, even on this cross-examination, under all the circumstances, it would be fair to do that. Ordinarily, it wouldn't be required. In this particular type question, it seems to me to be fair to do that. Ask him

(Testimony of Harry F. Williams.)

something else about his experience in such a testing operation.

Q. You have had experience for many years, have you not, in surveying vessels and finally approving them for owners? A. I have.

Q. For how many years?

A. 30, more than 30 years.

Q. And you have worked with the American Bureau of Shipping during that period, have you not?

A. I never worked for the American Bureau of Shipping. I worked with them.

Q. That was my question. You have been a chief engineer yourself? A. That is right.

Q. You have an unlimited license? A. Yes.

Q. Since 1911 you have had that license?

A. Yes.

Q. You are acquainted with the custom that prevails in repair work of the type here involved?

A. That is right.

Q. And you are qualified from that experience to state what the practice is in respect to the question that I put to you, are you not?

Mr. Howard: Counsel is not asking a question, he is making a statement and asking the witness to answer.

The Court: Instead of the question you asked, specify in respect to what.

Q. In respect of what the practice is concerning the extent of ship repair companies' responsibility covering the repairs made after the approval and

(Testimony of Harry F. Williams.)

inspection has been had and the vessel has been surrendered to the owners?

Mr. Howard: I renew my objection.

The Court: The objection is overruled. You may answer.

A. When the shipyard has finished with their repairs and we go out on a trial trip, all unfinished work or unsatisfactory work is found and the shipyard makes good this unsatisfactory work and it is accepted by the American Bureau, I think that ends the contract right there.

Q. And that is the practice so far as you know?

A. It is the practice in a great many building yards.

Mr. Hokanson: You may examine.

Redirect Examination

By Mr. Howard:

Q. This lubricating oil cooler, who did the work on that cooler after it was removed from the ship?

A. It was taken to the powerhouse and was cleaned out, steamed out and tested.

Q. Who did the work on it?

A. Commercial Ship Repair yard mechanics.

Q. Referring to Exhibit 12 again, counsel has asked you to express your opinion as to the reasonableness of the item of profit as shown on the second job hull 678 and 680. Do you find that figure, \$5987.68? Will you look to the left of that figure, under the column marked overhead? What do you find in that figure? A. \$10,978.

(Testimony of Harry F. Williams.)

Q. Will you look further left, under labor, and what is the cost of labor under that job?

A. It is 9487 labor hours.

Q. And the cost of that? A. \$17,062.15.

Q. Having in mind the cost of that labor on that job and the charge of \$10,978 for overhead, would that affect [404] your opinion one way or another as to the reasonableness of the profit claimed on that item?

Mr. Hokanson: I object to the question for the reason that he has not established that Mr. Williams is competent to testify as to the prevailing rates of hourly overhead in this area.

Mr. Howard: I will qualify him on that.

The Court: You may do that.

Q. Were you present yesterday when Mr. Harper of Commercial Ship Repair testified?

A. Yes, sir.

Q. Did you hear his statements at that time as to his claim of what the prevailing rate per man hour for overhead was at his shipyard?

A. I think he said \$1.09, if I am not mistaken. I ain't sure.

Q. Refreshing your memory, was it \$1.15.7?

A. Something like that, I don't know right off-hand. I am not an accountant and don't profess to be one.

Q. Having in mind also that testimony by Mr. Harper as to his statement as to the prevailing per man hour rate on overhead, will you now answer

(Testimony of Harry F. Williams.)

my question as to the reasonableness of the profit item, having in mind the overhead charge of \$10,-978 and the labor charge of \$17,062.15?

A. His profit shows one thing, and I don't know — [405] I would rather not answer the question.

Q. State your opinion as to the reasonableness of the charge for overhead on this item, having in mind the cost of the labor involved?

A. It looks high to me.

Q. Have you had occasion to analyze such statements on other jobs previously?

A. I haven't got—I am not familiar with the entire overhead of the yard, how many ships was in the yard at the time, how many men were there. I wouldn't be in a position to answer.

Q. Those items would all have a bearing on it, wouldn't they?

A. They would all have a bearing in my opinion.

Q. You still maintain after examining this Libelants' Exhibit 12 that the charges on Libelants' Exhibit 1 are about \$7000 too high?

A. I think so, unless I sit down and figure it out in more time.

Q. Referring to item 14 on Libelants' Exhibit 4 and to the corresponding item of \$900 for spare boiler coils on Libelants' Exhibit 6, you were submitting those figures to Mr. Antippas for approval, were you not? A. That's right.

Mr. Hokanson: I submit this matter has already [406] been gone into.

(Testimony of Harry F. Williams.)

The Court: I think so. The objection is sustained.

Q. Did you know that Mr. Antippas talked on the telephone with Mr. Black just before the ship went out on a trial trip?

A. I didn't know it, because I didn't hear it only by hearsay. I might have talked about it to him.

Q. Who told you?

A. Maybe Mr. Featherstone, I don't know.

Q. Do you know whether any arrangements were made for the payment of the bill at that time?

A. No, I do not. He had to establish his own credit, not me.

Q. Do you know how much profit the libelants' accounts showed they made on this job?

A. According to this exhibit, they claim they made a profit of \$5987.68.

The Court: That is on the extras?

The Witness: That is right.

The Court: Were you referring to extras when you said you thought the bill was about \$7000 too high?

The Witness: That is right.

The Court: Does that amount of profit affect your opinion as to how much, if any, it was too high? Do [407] you think it could be too high if the profit was \$5987?

The Witness: No, it couldn't. You have got to be reasonable. You have got to give and take here.

(Testimony of Harry F. Williams.)

Q. As a matter of fact, some of the charges that went into the overhead item might be considered as items of profit?

A. That it right, that may be possible.

Mr. Hokanson: If the Court please, I object to that.

The Court: That is appropriate. The question and answer will stand. If you wish later to ask something further about that, you may do so.

Q. You stated that you considered that it ended the contract when the ship was accepted by the American Bureau of Shipping after a trial, and that was the practice in many yards?

A. That is the practice.

Q. Do you know whether there has ever been claim made against a shipyard for defective work or material even after the ship had been accepted?

A. Yes, sir, latent defects.

Q. That is quite common, is it not?

A. It is common.

Q. So that your statement that the contract was ended [408] would be subject to that qualification?

A. Latent defects, reasonable time, too. You don't have to guarantee it.

Q. So it wouldn't necessarily follow that the shipyard's responsibility was ended when the contract was?

A. For a reasonable time. You should at least make one voyage with good results.

Mr. Howard: I have no further questions.

(Testimony of Harry F. Williams.)

Recross Examination

By Mr. Hokanson:

Q. Relating to Mr. Howard's last question, where the work is done under the supervision of the owner's representative or the chief engineer, and the latent defect involved in the claim is involved in that work, what is the practice with respect to the responsibility of the yard?

A. The latent defect could only be blamed on the yard for material they furnished.

Q. Not on workmanship done under the direction of the chief engineer? A. Yes, sir.

Q. You also stated to Mr. Howard that items of overhead listed on Exhibit 12 might overlap the profit. That is not based on your analysis of the exhibit, is it? A. No. [409]

Q. That is speculation, is it not? A. Right.

Q. If the records are accurate and that overhead picture reflects the true overhead, the profit is not high or unreasonable covering that work, is it?

A. If the yard is satisfied with the profit, it is all right. I am not determining that.

Q. If the figures are accurate, the price is not unreasonable if all they made by way of profit was \$5900, is that correct? A. That is correct.

Mr. Hokanson: That is all.

The Court: You may step down.

(Witness excused)

The Court: Call respondent's next witness.

Mr. Howard: Mr. Lund. [410]

STANLEY A. LUND

called as a witness by and on behalf of respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Will you state your name and residence address?

A. Stanley A. Lund, 5816 57th N. E., Seattle.

Q. What is your occupation?

A. I am in the chartering department at General Steamship.

Q. How long have you worked in that capacity?

A. Since 1936.

Q. Were you so employed in the months of August, September and October 1948?

A. I was.

Q. During those months that I have mentioned, did you have occasion to participate in any transactions relating to the tanker Urania?

A. Yes, in the husbanding of the vessel and also transferring funds from New York to Commercial Ship Repair.

Q. When you say husbanding of the vessel, will you explain what is meant by that? [411]

A. That is handling the purchase of stores and anything pertaining to the vessel; in this case, not concerning the repairs except—

Q. In husbanding the vessel, you were acting as agents for whom? A. For the owners.

Q. You are appearing here today under subpoena duces tecum served upon you?

(Testimony of Stanley A. Lund.)

A. Yes.

Q. Have you brought with you your files and records concerning the transactions that you have just referred to in your capacity as agent for the owners of the vessel? A. I have.

Q. Did your company, the General Steamship Corporation, Ltd., take any part, participate in any way in the negotiations relative to the work to be performed on the tanker Urania at the Commercial Ship Repair yard? A. No, we did not.

Q. Did you have any occasion to deal with the representative of the Commercial Ship Repair yard regarding the payment of the account or any portion of the account?

A. We paid them a partial payment of \$25,000. We received a telegram from the owners the day before, and the next day we received it and paid it over to Commercial Ship Repair. [412]

Q. Prior to receipt of that telegram from the owners, had you received any demand or notice or request from the Commercial Ship Repair yard for payment of any portion of the account?

A. No request was made on us for payment.

Q. At any time up to October 15, 1948, was any demand made upon you or anyone in your office, to your knowledge, for payment of the balance due on the account for the repairs to the tanker Urania at Commercial Ship Repair yard?

A. No, there wasn't.

(Testimony of Stanley A. Lund.)

Q. If such demand had been made on your company, would you know about it?

A. Yes, I would.

Q. Will you state, please, what your own responsibility was with respect to the tanker *Urania* during this period?

A. I handled the operation of it, handling stores and small purchases made, also some parts for the Union Diesel engine, which we paid for on behalf of the owners.

Q. In making such payments or disbursements, did you first obtain approval from the owners in New York?

A. Yes. With respect to those engine parts, we received a letter on the first shipment from Mr. Antippas, and the balance were made on the request of Mr. Williams, [413] whom we understood was to order those parts, and we obtained funds and they were paid through us.

Q. Do you recall having talked with Mr. Black or Mr. Featherstone of the Commercial Ship Repair yard prior to October 14 regarding the threat of a libel on the vessel?

A. Well, I understood that they had discussed the payment, although we had nothing to do with it.

Q. Did you talk with them yourself?

A. Yes. They asked if we had received payment of the balance of the bill, which we had not, and also understood that they would probably libel the

(Testimony of Stanley A. Lund.)

vessel if they hadn't received those funds prior to the expected sailing of the vessel.

Q. Referring to your record, if necessary to refresh your memory, will you please state whether or not you reported the threat of an arrest or libel of the vessel to the shipowner in New York prior to October 14? You may refer to your records.

A. I am sorry, I don't have any record of sending any telegram or teletype. I couldn't say whether we telephoned them before that time. It didn't materialize until the evening, I understand, and the next morning we communicated by telephone and a bond was subsequently put up.

Q. That would be after the vessel had actually been [414] arrested?

A. Yes. I don't recall having communicated with them the day before, because it actually wasn't libeled until late in the evening, I understand.

Q. Do you recall any prior conversation with the owners regarding that matter?

A. One or two days before, of the same matter, but we had nothing to do with the conversations in connection with payment, because that was a matter between the owner and the shipyard.

Q. Do you recall arranging for the dispatch of a surveyor and mechanics to Port Angeles, Washington, after the ship sailed, to make some emergency repairs?

A. Yes, we did. It was reported from Port Angeles that the steering engine had broken down,

(Testimony of Stanley A. Lund.)

and we immediately called Mr. Antippas who authorized us to send workmen.

Q. Can you state what day that would have been?

A. I have it in my records. That was Saturday morning, October 16.

Q. Who arranged for the dispatch of those men to Port Angeles?

Mr. Hokanson: Before answering, I would like to get an objection for the record. If the Court please, any testimony now offered going to subsequent repairs or alleged damages flowing from subsequent repairs to [415] the vessel after it left the yard is objected to on the ground that the vessel was accepted, approved, and responsibility of the libelants terminated upon delivery of the vessel into the owners' hands.

The Court: The objection is overruled.

Q. Do you have the last question in mind?

A. Yes. That was on Saturday morning, October 16, and we telephoned the owners and they approved of these amounts, estimated amounts we gave them for the repairs which were taken care of that day, and the vessel sailed at 8 p.m. that evening. Mr. Clark, James Clark, the surveyor, arranged for the workmen and supervised the work in Port Angeles.

Mr. Howard: Your Honor, with your permission I am taking up this subject a little out of order with this witness with the hope that we can

(Testimony of Stanley A. Lund.)

excuse this witness from further attendance.

The Court: I approve.

Q. State, if you know, how long after the departure of the vessel from the Winslow yard you arranged for the dispatch of personnel from the ship yard to Port Angeles?

A. I would just be guessing at it, but I think it was around noon that they left Seattle. They flew to Port Angeles to save time.

Q. Do your records show the date and hour of departure [416] of the vessel from Seattle or Winslow? A. You mean from Winslow?

Q. Yes.

A. Yes, I have that. I beg your pardon, I don't. It was Saturday afternoon, the 15th, in the afternoon. It was Friday afternoon, I am sorry, and it arrived there on Saturday morning, October 16.

Q. Do I understand you to say the ship sailed Friday afternoon?

A. I believe so. I can determine that, but unfortunately, I believe we gave that information by telephone to the owners and didn't write it.

Q. If the ship sailed Friday afternoon, then when did you receive a request for repairs to the ship at Port Angeles?

A. As far as I recall, it was when we arrived in the office on October 16.

The Court: You mentioned Friday and then you mentioned October 16. There is nothing in those two statements to indicate whether the two are the same.

(Testimony of Stanley A. Lund.)

The Witness: The ship sailed on the 15th, Friday, and it was Saturday morning, October 16, that it was found that the vessel was in need of repairs.

Mr. Howard: If the Court please, I believe we can stipulate between counsel that the ship [417] left the Commerical Ship Repair yard at Winslow—this is the *Urania*—left on or about 8:30 p.m. on Friday, October 15. Is that agreeable?

Mr. Hokanson: That is agreeable.

Q. What action did you take upon receipt of this request for assistance at Port Angeles?

A. We telephoned the owners and explained what had happened, and I explained to them the approximate cost of the repairs and also the surveyor's fees, and we told them subsequently the cost of it and they told us to go ahead with the work. The men were sent up there right after we were in telephone communication.

Q. What men were sent up?

A. Mr. Clark was called in to supervise the job.

Q. Who is Mr. Clark?

A. Mr. James Clark, the surveyor.

Q. By whom was he employed at this time? Is he an independent surveyor?

A. He is an independent surveyor.

The Court: Called on behalf of the owners of the vessel?

The Witness: Yes.

Q. Did anyone accompany Mr. Clark to Port Angeles?

(Testimony of Stanley A. Lund.)

A. I believe there were two machinists from Commercial Ship Repair, and they went to Port Angeles by plane, [418] arriving there, I believe, in the early afternoon.

(Surveyor fees and repair fees marked Respondent's Exhibit A-5 for Identification.)

Q. Handing you what has been marked for identification as Respondent's Exhibit A-5, can you identify those documents? A. Yes.

Q. What are they, please?

A. It is the surveyor's fees and the repair yard's fees for repair of the vessel at Port Angeles.

Q. I ask you to examine them again and state whether any other items are included in those charges? Is there a charge there for a survey made by Mr. Clark at Winslow, Washington.

A. No.

Q. Please look again at the second page of this invoice. I ask you whether that refers to work at Port Angeles or work at Winslow, Washington?

A. I beg your pardon. That second invoice is the one that was in connection with the Winslow inspection of the vessel.

Q. Who made that inspection?

A. Mr. James Clark.

Q. Do you know the nature of the inspection that was made at that time? [419]

A. My recollection, it was an inspection of the boiler.

Q. At whose request was that made?

(Testimony of Stanley A. Lund.)

A. Mr. Antippas'.

Q. Do you know what the results of that inspection were?

A. We got the results in the report made by Mr. Clark. We got a report from Mr. Clark concerning this survey he made and the work accomplished.

The Court: Where?

The Witness: At Winslow.

Mr. Howard: If the Court please, we took the deposition of Mr. James Clark last week in California, and the deposition is here now. We had a stipulation between counsel at that time that the two exhibits could be added to the deposition at the time the deposition was read into the record up here, of course reserving any rights he has to object to the admissibility of the exhibits. We would like to add those exhibits now.

The Court: To the deposition?

Mr. Howard: They are referred to in the deposition, and I would imagine they should be attached to the deposition for that purpose.

The Court: You may do that. Have they been marked for identification? [420]

Mr. Howard: No, your Honor. They have been given a number for identification in the deposition.

The Court: Have they been marked by this clerk here today?

Mr. Howard: No, your Honor.

The Court: There is nothing before the Court.

(Testimony of Stanley A. Lund.)

Proceed with respect to what you have just attached by paper clip to the deposition.

Mr. Howard: I ask those be marked as exhibits.

The Court: By what identifying mark are they referred to in the deposition?

Mr. Howard: If the Court please, these are referred to in the Clark deposition as Exhibits SF 1 and SF 2 for identification, claimants.

The Court: Which one is which? How can you tell which one of the things which the clerk now has in his hand is one or the other of those?

Mr. Howard: The first set of sheets that the clerk has in his hands corresponds with Exhibit SF 1 in the deposition.

The Court: That one will be marked Respondent's Exhibit A-6.

(Survey report marked Respondent's Exhibit A-6 for Identification.)

Mr. Howard: The next one, if the Court [421] please, consists of one sheet, SF 2.

The Court: That one will be marked by the clerk as Respondent's Exhibit A-7.

(10-18-48 survey report marked Respondents' Exhibit A-7 for Identification.)

Q. Handing you what has been marked for identification Respondent's Exhibit A-6, can you identify that?

A. That is Mr. Clark's survey report on completion of the work, his survey and the work that

(Testimony of Stanley A. Lund.)

was completed at Winslow under his supervision on that boiler.

Q. That corresponds with the invoices you have previously referred to under Respondent's Exhibit A-5 for Winslow work?

A. That covers his work there, yes.

Q. Will you refer next to Respondent's Exhibit A-7? Can you identify that?

A. His report on completion of the work at Port Angeles.

The Court: The same surveyor?

The Witness: The same surveyor, Mr. Clark.

Q. Will you examine the charges shown on Respondent's Exhibit A-5 for these two survey reports, services of surveyor, and state if you can whether or not you consider these reasonable charges for the work performed?

A. Not being a qualified engineer, I couldn't say myself. [422]

Q. Can you state whether the charges included in the invoices contained in Respondent's Exhibit A-5 have been paid? A. Yes, they have.

Q. By whom?

A. By ourselves on behalf of the owners.

Q. Are you able to state when they were paid?

A. Yes.

Mr. Howard: I offer Respondent's Exhibit A-5.

Mr. Hokanson: No objection, Your Honor.

The Court: As I understand it, you originally noted the same objection to that exhibit which you

(Testimony of Stanley A. Lund.)

did to the line of testimony in developing it? It concerns repairs made after the alleged acceptance of the libelants' repair job.

Mr. Hokanson: Yes, your Honor. I want my objection to stand to all of that. With respect to the admissibility of this document, I have no question of it if it can later be proved relevant, but I want to reserve my objection.

The Court: The objection is reserved and the Court's action is subject to it, but the Court does overrule the objection and admits Exhibit A-5 now.

(Respondent's Exhibit A-5 received in evidence.) [423]

RESPONDENT'S EXHIBIT A-5

James D. Clarke
Marine Surveyor

2606 50th S. W.
Seattle, Washington

Telephone: AValon 4495

To services of Engineer attending the M/T
Urania at Port Angeles supervising repairs to
steering gear system.....

\$75.00 \$75.00

To expenses of above.....

\$10.35 \$10.35

Total

\$85.35

Computations O.K.

Received—

Check No. 23332. (Figures in pencil.)

Urania (In pencil).

Approved—(Initialed L. A.)

Rec'd payment, J. D. Clarke (This notation in writing).

(Testimony of Stanley A. Lund.)

James D. Clarke
Marine Surveyor

2606 50th S. W.

Seattle, Washington

Telephone: AValon 4495

To M/T Urania and Owners,
c/o General Steamship Corp. Ltd.

1211 4th Ave.

Seattle 1, Washington

To Services of Engineer inspecting certain ma-
chinery and boiler items of the above vessel
and submitting verbal report of same.....

\$50.00 \$50.00

To expenses of Ferry to Port of Winslow.....

\$ 3.60 \$ 3.60

Total

\$53.60

Computations—O.K.✓

Check No. 23332. (Figures in pencil.)

Urania (In pencil).

Rec'd payment, J. D. Clarke. (This notation is in writing.)

Invoice
Commercial Ship Repair

Invoice Date, 10/18/48

Invoice No. 0936

Via (10-2)

Sold to: M/T "Urania" and Owners,
c/o General Steamship Corp.
1211 - 4th Avenue
Seattle, Washington

Description

Price

Amount

Furnish services of one electrician and one
machinist to report to M/T Urania at Port
Angeles, Washington, to repair steering
gear mechanism

Ordered by J. D. Clark, Acting Port Engi-
neer

172.00

3% Sales Tax.....

5.16

Total

\$177.16

Computations O.K.✓

Approved (Initials illegible)

Check No. 23352 (Figures in pencil).

Urania (In pencil).

Stamped Paid 10-29-48. Commercial Ship Repair.

/s/ M. Monson, Bkkpr.

Admitted April 9, 1949.

(Testimony of Stanley A. Lund.)

Mr. Howard: You may examine.

Cross-Examination

By Mr. Hokanson:

Q. Do you recall a telephone conversation with Mr. Black shortly prior to the time when the *Urania* was arrested under civil process?

A. Yes, I did talk to him.

Q. Mr. Black on that occasion asked you, did he not, whether you had funds on hand from the owners to pay the bill?

A. As I recall it, he did, yes.

Q. Did he ask you whether you would guarantee the bill? A. I believe so, at the time.

The Court: What date, do you recall?

The Witness: I am sorry, I can't recall the date.

Q. This was prior to the libeling of the vessel, wasn't it? A. Yes.

Q. Was it on or about October 13, 1948?

The Court: What day of the week?

Mr. Hokanson: That was a Wednesday, and is the date on which the libel was issued against the *Urania*.

The Witness: I am quite sure I talked to him on that [424] date about this subject, yes.

Q. Did he advise you at that time that it was his intention to libel the vessel?

A. Yes, he did.

Q. Did you inform him on that occasion that you could take no responsibility for the guarantee-

(Testimony of Stanley A. Lund.)

ing of the bill and that Mr. Black would have to use his own discretion as to any security measures?

A. Yes, that is correct.

Q. You are not certain whether you ever communicated to the Compania Naviera Limitada in New York the information that you had concerning the Commercial Ship's intentions to libel the vessel?

A. I don't recall doing it prior to the time that they actually did libel the vessel.

Q. Do you have records to show the value of the spare parts, the engine parts ordered and paid at the request of Mr. Harry Williams?

A. Is that from the Union Diesel?

Q. Yes.

A. The total is \$10,837.13 of the spare parts that were ordered through Mr. Williams, and also from the owners.

Q. Did you disburse funds in payment of those parts upon the approval of Mr. Williams?

A. Yes. [425]

The Court: How much was the payment, if you know?

The Witness: Of the entire amount?

The Court: Of that amount you had in mind when you spoke of paying out funds for engine spare parts upon approval of Mr. Williams.

The Witness: Let me start from the beginning in connection with the spare parts. First we got a letter from the owners saying they had ordered

(Testimony of Stanley A. Lund.)

spare parts from the Union Diesel and had asked us to pay a sight draft on arrival of spare parts. The amount remaining was \$6812, which we paid upon the arrival and arranged for the transportation over to Winslow from Seattle. That was the start of the ordering of spare parts from Union Diesel. Subsequent to that, Mr. Williams ordered the parts.

Q. Subsequent to that time, Mr. Williams ordered the parts, to your knowledge?

A. Yes, he did.

Q. Do you know, was the figure you gave of \$10,000 the amount you disbursed over his approval?

A. Yes. That includes the spare parts that were ordered from the owners direct.

Q. You have broken down the account to see how much of the items were approved by Mr. Williams?

A. They all were; with the exception of that first [426] one, they were all approved by Mr. Williams, ordered by him and sent to us and subsequently paid.

Q. Referring to Respondent's Exhibit A-5——

The Court: It has been admitted in evidence, the last one admitted.

Q. That contains an invoice marked paid covering services furnished by Commercial Ship Repair, does it not? A. Yes.

Q. What is the amount? A. \$177.16.

(Testimony of Stanley A. Lund.)

Q. That covers the services of two specialists from Commercial Ship Repair to Port Angeles to attend the vessel? A. Yes.

Q. Had you received authority from Mr. Antipapas or representatives of his company to pay that bill to Commercial Ship Repair?

A. Yes, we had the authority.

Q. You first explained to the company, didn't you, what the character of the bill was and what it covered?

A. Yes, we gave them that information.

Q. And they authorized payment of the bill?

A. Yes.

Q. That was after the vessel had left Winslow, Washington? A. Yes, it was. [427]

Q. Mr. Clark, the surveyor that you called in, was representing you in connection with his survey, was he not?

A. He was employed by us on behalf of the owners to supervise the job.

Q. Referring to Respondent's Exhibit A-6, that document has reference to work on the pump to the Clayton boiler and not the boiler itself, does it not?

A. Yes, his recommendations are in connection with the feed pump.

Q. And not the boiler?

A. That is the item that he said he has found unsatisfactory.

(Testimony of Stanley A. Lund.)

Q. Does it state that the boiler itself is satisfactory?

A. Well, to quote him here, he says, "Clayton heating boiler in operation. Construction of boiler found to be satisfactory."

Mr. Howard: If the Court please, the document will speak for itself.

Mr. Hokanson: I merely want to establish that there has been a loose use of terms, boiler and pump.

The Court: The objection is overruled. Do not read out loud into the record what is in that exhibit, because the exhibit is not in evidence yet. It does not prevent you from stating as of your own knowledge [428] something that may also be found in the exhibit, but you have to do it of your own knowledge and only if it is your own knowledge.

Mr. Hokanson: I have no further questions of this witness.

Redirect Examination

By Mr. Howard:

Q. Can you state the amount, the value of the spare parts furnished and paid for by you which were obtained or ordered by the owners?

A. The items that were ordered by the owners were covered in their letter to us. The amount that we disbursed was \$6812, plus a transportation charge, I believe it was, of \$5.90.

Q. Do you have a figure there for the amount of spare parts ordered by Mr. Williams that were paid

(Testimony of Stanley A. Lund.)

for through your office?

A. The entire amount was \$10,837.13, less that last one.

Q. It would be the difference between the two?

A. Yes.

Q. Was authority obtained first from the owners at New York before payment of the latter amount?

Mr. Hokanson: I object to that as going [429] beyond the scope of redirect. He has covered that in his direct examination.

Moreover, he is leading the witness.

The Court: Sustained.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: Step down.

(Witness excused.)

The Court: At this time we will take a short recess.

(Recess.)

Mr. Howard: We have one more witness that we would like to call in answer to the libel, and as soon as I found out that the Court was to hold a session on Saturday, I undertook to contact that witness and found he had left town for the week-end, but we expect to call him on Monday.

The Court: I am very much opposed to delay in any part of the trial on account of such matters as that. It is up to counsel to have the witnesses in attendance.

Mr. Howard: Your Honor, I had planned for an adjournment from Friday over to Monday. We

hadn't planned on a Saturday session, and the witness wasn't notified to appear on Saturday, so I would like to [430] hold this part of the case open on behalf of claimant until we can proceed on Monday. I can proceed with the cross libel.

The Court: You may proceed.

Mr. Howard: I believe libelants have one witness present now as a rebuttal on the libel that they may wish to call at this time so that that witness can be excused.

The Court: How is the rebuttal going to be completed as to that witness if you still have another witness in the defense of the libel to call?

Mr. Howard: That is up to the libelants. They indicated they might wish to call that witness this afternoon. I was only giving them that opportunity if they desire to do so.

Mr. Hokanson: In the interest of keeping the record straight, I can call this witness on Monday at the conclusion of Mr. Howard's case.

The Court: I think that is better. Proceed.

Mr. Howard: At this time, we have already eliminated the item with respect to the tools reported to have been stolen from the ship. We would also like to waive and remove from the cross libel item 9 on page 3, dealing with miscellaneous corrective repairs at Long Beach, \$3214, as to which we will not present [431] any testimony at this time.

(Opening statement made by counsel for cross libelants.)

The Court: Do you wish to make any responsive statement?

Mr. Hokanson: May it please the Court, the cross respondents will reserve their statement with respect to the cross libel until the conclusion of the case put on by the cross libelant.

So that my understanding may be clear, Your Honor, is it now the state of these proceedings that the cross libelant may proceed with the evidence in support of his cross libel, putting over until Monday the conclusion of his defense to the libelants' case in chief?

The Court: That will be permitted.

Mr. Hokanson: One other point on which I am not clear from Mr. Howard's statement is with respect to item 9 of the cross libel, which he indicated was being deleted, but qualified his statement to that effect by saying that no testimony as to that item would be offered at this time.

The Court: Do you wish to strike that item?

Mr. Howard: Yes, I do, Your Honor.

The Court: Let the record show that item (9) on [432] page 3, being part of the allegations in paragraph IV of the cross libel, is stricken and withdrawn.

Mr. Howard: I would like at this time to read into the record the deposition of Captain Andreas Beis.

(Testimony of Stanley A. Lund.)

The Court: You may do that. Does that comprise all of the cross libelant's depositions taken?

Mr. Howard: No, Your Honor, there are numerous other depositions taken which we have to read.

Mr. Hokanson: May it please the Court, Mr. Todd of our office will respond to the questions. May the record show that the cross respondents at this time object to the introduction of any evidence—I will reserve my objection until the questions are read.

The Court: Can you not agree to waive the formal parts and start reading the deposition?

Mr. Howard: It is agreeable to me.

The Court: Do that. There is no objection to the taking of the deposition, is there?

Mr. Hokanson: No objection.

The Court: Proceed to read the deposition.

DEPOSITION OF CAPTAIN BEIS

(Mr. Baillie acting as New York correspondent for claimant and cross-libelant; Mr. Silverthorne acting as New York correspondent for libelant and cross-respondent.)

Direct Examination

By Mr. Baillie:

Q. Captain, what licenses do you hold?

A. Master's license.

Q. Is that Greek and Panamanian?

A. I have two licenses, Greek and Panamanian.

(Deposition of Captain Beis.)

Q. Will you tell us what your experience has been?

A. Well, I have sea experience.

Q. When did you first go to sea? A. 1925.

Q. And what did you sail as?

A. You mean the first time?

Q. Yes. A. The first time as deck boy.

Q. And after that did you continue going to sea until the present time? A. Yes.

Q. When did you become an officer?

A. 1933.

Q. And what license did you have then?

A. Second mate.

Q. Did you obtain a first mate's license?

A. After that in 1939.

Q. And when did you obtain a master's license?

A. 1940.

Q. On what ships were you sailing?

A. Well, before the war Greek ships under the Greek [434] flag; and during the war I was working for the War Shipping Administration, being on American boats second mate and chief mate.

Q. What types of ships were those?

A. During the war, Liberty ships.

Q. Have you at any time sailed on diesel powered ships?

A. Before that no, only sailing ships; before when I was young.

Q. During the war did you sail on cargo ships?

A. Cargo ships.

(Deposition of Captain Beis.)

Q. On tankers? A. Tankers.

Q. How long have you been sailing for Compania Naviera Limitada?

A. Since the end of 1946.

Q. How long have you been sailing as master?

A. Well, 1946 S. S. Pinta and motor tanker Urania.

Q. Now, Captain, in July 1948 did you receive instructions from your employers to proceed to Seattle? A. That's right.

Q. And take command of the motor tanker Urania? A. Yes.

Q. And the company had just acquired the ship, had it, had just bought the ship?

A. They had bought the ship, that's right.

Q. And you took delivery from the United States Navy, [435] is that correct? A. Yes.

Q. Now can you give me a general description of this ship, and the type of ship it was?

A. She was a Y. O. 73 Navy tanker.

Q. And do you have any idea of her dimensions?

A. She was a good ship.

Q. Her dimensions, her size.

A. Oh, her size. I got my logbook, I don't know if I remember that.

Q. Captain, I show you this book purporting to be the logbook of the M/T Urania. A. Yes.

Q. And I ask you if that is the smooth log of the M/T Urania? A. This is the smooth log.

Q. Is that right, Captain?

A. That's right.

(Deposition of Captain Beis.)

Mr. Silverthorne: At this point I would like to inquire what the dates are you are referring to in the logbook.

Mr. Baillie: At the present time I am introducing the whole logbook.

Mr. Silverthorne: And what date does it start with?

Mr. Baillie: This smooth log covers from the date of July 29, 1948 to December 4, 1948. [436] I will withdraw my statement that I was offering it in its entirety. The captain left the ship on November 14, 1948. I offer therefore only such part of it as covers the period during which Captain Beis was master of the M/T Urania.

Mr. Silverthorne: I object to the introduction of any part of the logbook which covers the period from October 13, 1948 on, since this litigation or this action was commenced on October 13, 1948 by the filing of a libel, and my objection is grounded on the basis that any records prepared after that time would be selfserving, since they were prepared after the time the litigation was commenced. ”

Mr. Hokanson: May it please the Court, where objections are made I feel that the Court should rule upon them.

The Court: Do you wish it understood that everywhere an objection is made you insert it again and wish the Court to rule upon it?

(Deposition of Captain Beis.)

Mr. Hokanson: It is hard for me to say at this moment. I will take the stand and read the answers. [437]

The Court: I think you should take the stand. Turn to page 6.

Mr. Hokanson: Your Honor, I would like a ruling on the objection registered by Mr. Silverthorne.

The Court: What is the basis of the objection?

Mr. Hokanson: That the document is self-serving.

The Court: It is a logbook.

Mr. Hokanson: Yes, covering entries made subsequent to the institution of litigation.

The Court: Do you object that it is not made in the ordinary course of business, or as a logbook should be kept?

Mr. Hokanson: That is not the basis of the objection.

The Court: The objection is overruled. Is this the official logbook?

Mr. Howard: Yes, it is, Your Honor.

The Court: Has it been so established by the evidence?

Mr. Howard: The next question, Your Honor, establishes that, I believe.

The Court: The objection is overruled. The official logbook, of course, is always admissible in evidence on any material point. [438]

(Deposition of Captain Beis.)

“Mr. Baillie: I ask that it be marked for identification.

(Marked Respondent's Exhibit A for Identification.)

Q. Captain, is this logbook up to the time you left the ship in your own handwriting?

A. That is my own handwriting (indicating), all this.”

Mr. Howard: At this time I will offer the logbook in evidence. It is marked in this deposition as Respondent's Exhibit A for identification.

The Court: Let it be marked Respondent's Exhibit A-8 for identification.

(Smooth log of M/T Urania marked Respondent's Exhibit A-8 for identification.)

Mr. Hokanson: Let the record show my objection.

The Court: It is now received in evidence, the objection thereto being overruled.

(Respondent's Exhibit A-8 received in evidence.)

“Q. You are pointing to a page that happens to be open. [439] Will you examine the log and tell me how much of it is in your handwriting?

A. Yes, from here to here (indicating).

Q. That is from the beginning to the date November 11, 1948? A. That's right.

Q. In preparing the smooth log from what

(Deposition of Captain Beis.)

source do you obtain your information to write in the smooth log? From what source do you obtain the information that is written in the smooth log?

A. This is the rule, the smooth log book.

Q. Yes, I know, but you have copied that from somewhere.

A. From the rough logbook.

Q. And as I understand it your rough logbook is kept aboard the ship, is that correct?

A. That's right.

Q. And you make what? An exact copy?

A. Exactly what the rough logbook has, the same thing.

Q. And is your rough logbook kept in English or in Greek?

A. Well, the chief mate don't speak—sometimes he write in English and sometimes he write in Greek in the rough logbook.

Q. In other words the rough log is kept both in English and in Greek? A. Yes. [440]

Q. And when you make out the smooth log you translate it? A. That's right.

Q. Is that correct? A. Correct.

Q. And you make an exact translation?

A. An exact translation of the log.

Q. Now let us come back to the dimensions of the ship. Did you find them in here at all?

A. The dimensions?

Q. Yes.

A. No. I couldn't find that yet. It was 166—

(Deposition of Captain Beis.)

Q. If you are not sure we will get that from another source. A. I don't remember.

Q. In any event she was a small tanker. How many cargo tanks did she have?

A. Four port and starboard.

Q. In other words eight in all?

A. Eight in all.

Q. Now Captain, the logbook shows that you took delivery of the ship at the Foss Launch Tug pier in Seattle? A. That's right.

Q. When you took delivery did you have a full crew aboard her? A. Yes, sir.

Q. And will you tell us of what ratings and officers the crew consisted, on a ship of this size? How many [441] deck officers?

A. Two deck officers.

Q. A chief mate and a second mate?

A. Chief and second mate, and boatswain, 4 A Bs.

Q. And below decks?

A. 4 engineers, 1 wiper, a cook, steward, messman.

Q. How about oilers? A. No oilers.

Q. Only one wiper?

A. One wiper. Well, he was working daytime 8 hours.

Q. You had not other unlicensed personnel in the engineroom? A. 4 engineers.

Q. Licensed? A. Licensed, that's right.

Q. Of course she is a diesel?

A. Diesel engines, yes.

(Deposition of Captain Beis.)

Q. Can you give us some idea of the experience of the other licensed personnel on board the ship?

A. You mean the——

Q. For instance the chief mate, do you know what his experience had been?"

Mr. Hokanson: That is objected to as hearsay, involving a hearsay answer. [442]

Mr. Howard: This witness might very well know what the experience of the chief engineer had been from personal knowledge.

The Court: The objection is overruled.

"A. Yes, he was about 13 years chief mate.

Q. And the second mate?"

Mr. Hokanson: Same objection.

The Court: Overruled.

"A. Oh, he was an experienced man.

Q. And how about the engineers? Did you know anything about their experience?

A. Yes, the engineers they were—the chief engineer was many years on Italian ships, Rumanian ships, English [443] ships.

Q. How about the other engineers?

(Deposition of Captain Beis.)

A. They were from the Greek Navy, good engineers."

Mr. Hokanson: I move to strike the last part of the statement as not responsive and involving a conclusion of the witness.

The Court: The objection is overruled and the motion denied.

"Q. Now the log shows that you were at the Foss Launch Tug pier until August 5, 1948.

A. Yes.

Q. And that then she proceeded to——

A. Winslow.

Q. To the Commercial Ship Repair yard, is that correct? A. That's right.

Q. And that she stayed at the Commercial Ship Repair yard until when?

A. October 15th or something like that, or 16th. It was Friday the 15th or 16th.

Q. Yes, that is correct. She sailed on the 15th of October. [444]

Mr. Silverthorne: You read that from the logbook?

Mr. Baillie: From the logbook, yes.

Q. During that period that she was at the Commercial Ship Repair yard what was being done to the ship?

A. Well, the first thing they started to clean tanks.

(Deposition of Captain Beis.)

Q. Speaking generally what was being done?
Was the ship being put in condition? A. Yes.

Q. And undergoing repairs? A. Yes.

Q. Did you have anything to do with the drawing up of the specifications for repairs?

A. Well, we have that what we call the engineer from the office.

Q. But you yourself had nothing to do with drawing up the specifications?

A. Well, I must see the specifications and the report every day, to see if they are doing right, and then I have to go to the Commercial—to the Manager of the yard.”

Mr. Hokanson: Move to strike that as not responsive.

The Court: The motion is denied. [445]

“Q. I am talking about before the work began.

A. Oh, before the work began.

Q. Did you have anything to do with preparing the specifications? A. Oh no.

Q. Now you had a crew aboard the ship while she was in the yard, is that correct?

A. That's right.

Q. Will you tell us what work that crew was doing, if any, during the time the ship was in the repair yard?

(Deposition of Captain Beis.)

A. Well, they cleaned, tested the hull, chipping and painting the deck, that is all.

Q. That is above the waterline?

A. Yes, from the waterline to the top, painted the ship. We cleaned first and then painted the ship.

Q. You are talking now about the deck personnel, is that correct? A. That is correct.

Q. Do you know what the engineroom personnel did?

A. Well, they were working, too; I don't know what kind of work they were doing.

Q. That didn't come under your jurisdiction, is that right? A. No, it did not.

Q. Now in painting the hull of the ship above the waterline did the crew paint any Plimsoll marks port and [446] starboard side?"

Mr. Hokanson: At this point, for the record I would like to interpose an objection to any testimony which is here given relating to the conversion and repair work accomplished by Commercial Ship Repair on the ground that the evidence shows that all of the work was accepted and approved by the owners prior to the sailing of the vessel, and that any objection relating to the qualifications or competency of the work done in the yard have been waived by the owners in accepting the vessel, and the claimant corporation is estopped now to seek

(Deposition of Captain Beis.)

damages by way of alleged deficiencies or defects in the accomplishment of that work.

That objection goes to any testimony along that line hereafter, and rather than interrupt from time to time, may the record show my continuing objection?

The Court: Is there any objection to that arrangement?

Mr. Howard: No objection.

The Court: That arrangement is approved.

At this time, the objection is overruled and where objection is to the same effect, unless the Court at some [447] particular place in the testimony indicates otherwise, the ruling of the Court is the same and will be the same.

“A. That is right, and also the name of the ship at the bow.

Q. Was anything done by the repair yard to the cargo tanks? Was any work done by the repair yard to the cargo tanks?

A. Well, they started—I mean they cleaned the tanks. I don’t know if the people who were working in the tanks belonged to the yard.

Q. I mean any work that was done to the cargo tanks was done by repair yard personnel, or people employed by the repair yard?

A. Well, I don’t know. I think they hired other companies.

(Deposition of Captain Beis.)

Q. I am not interested in the relationship of the men who did the work. I am interested in what work was done.

A. You mean on the tanks.

Q. The cargo tanks aboard the ship, Captain.

A. Yes.

Q. Was anything done to those tanks?

A. They cleaned the tanks. [448]

Q. They cleaned the tanks? A. Yes.

Q. Did you inspect the tanks after that?

A. Yes.

Q. And what did you find?

A. I found oil, not cleaned good; and then I reported to the Manager of the yard the tanks not clean, and he answered me, "That is all we can do."

Q. And after you reported that to the Manager of the yard nothing else was done, is that correct?

A. That is right.

Q. Now did the repair yard people refit and rig bulwark stanchions at the port and starboard sides of the main deck? A. Yes.

Q. Did they do work such as that?

A. Yes, they did the work but they put the old wire on that."

Mr. Hokanson: That is objected to as not responsive.

The Court: Overruled.

(Deposition of Captain Beis.)

“Q. They left the old wire on that?

A. Yes, because they should change the wire.”

Mr. Hokanson: That is objected to as involving a conclusion of the witness.

The Court: It is not ideally stated and it may be that under some conditions an objection like that should be sustained, but this is a deposition. The objection is overruled.

“Q. Now, did the repair yard do work on the ballast tanks?

A. That's right; the ballast tanks, yes; they changed them to make fuel oil tanks.

Q. They changed the ballast tanks to fuel oil tanks?

A. Yes, but they didn't make a good job.

Mr. Baillie: We will cover that later, Captain.

Mr. Silverthorne: I will object to that, not just on form; it is not responsive, and I ask that it be stricken out.”

Mr. Hokanson: That is objected to on the ground that it is not responsive and involves the opinion of the witness, who the record shows was not qualified to answer [450] since the work was not under his supervision. The record shows that the work was under the supervision of Mr. Williams, a surveyor hired by the owners.

(Deposition of Captain Beis.)

The Court: That part of the statement, "but they didn't make a good job," is stricken from the answer and the Court will disregard it.

“Q. Did the repair yard do work on the navigation lights? A. That's right.

Q. And other lights of the ship?

A. That's right, yes.

Q. Did the repair yard do work on the ship's whistles? A. That's right.

Q. Now there was an ammunition storeroom on the ship, is that correct? A. Yes.

Q. Was anything done to the bulkhead at the forward ammunition storeroom?

A. No, they didn't do nothing.

Q. Did the repair yard do work on the plumbing and heating fixtures? A. That is right.

Q. By the way, this is all work that you observed? A. That is right.

Q. During the time the work was being done you were aboard the ship at all times? [451]

A. Yes, all the time.

Q. Now, did the repair yard install crew's quarters aboard the ship? A. That's right.

Q. Can you tell us when that work was done during the time that the ship was at the repair yard? A. Do you mean all the job?

Q. No, the work on the crew's quarters? The ship was in the yard from August through to the middle of October? A. That is right.

(Deposition of Captain Beis.)

Q. When was the repair yard working on the crew's quarters? A. Till the last day.

Q. Did the repair yard do work on the ship's refrigeration? A. Yes.

Q. Did the repair yard do work on the exhaust blower of the galley? A. That's right.

Q. Did the repair yard do work on the anchor windlass? A. That's right.

Q. Now when you took delivery of the ship did you inspect the lifeboats on the ship?

A. When they delivered the ship?

Q. When they delivered the ship from the Navy?

A. From the Navy, yes.

Q. Were there any missing floor boards? [452]

A. No, there were all the boards.

Q. Now, Captain, during the time the ship was in the repair yard did you object to any of the work that was being done by the repair yard people?

A. Well, some jobs had been done but some jobs no.

Q. Did you point out to any of the repair yard employees any work that you found had not been done properly? A. Yes.

Q. How frequently did you make such reports?

A. Well, when I saw the job was no good; when I saw the job was no good then I went and told the foreman, and the foreman went and told the manager of the yard, "This job they didn't do good."

Mr. Silverthorne: I object to any further testimony on this line, because the answer is not respon-

(Deposition of Captain Beis.)

sive. I have no objection to your question, but I don't think the answer is responsive."

Mr. Hokanson: I am registering the same objection as Mr. Silverthorne, and ask the Court to rule upon it.

The Court: Overruled. [453]

"Q. After the ship sailed from the repair yard did there come a time when you wanted to shift ballast aboard the ship?

A. We didn't shift any ballast.

Q. You did not?

A. No, we did not. We loaded the ship a couple of times and then we discharged the ship.

Mr. Silverthorne: I object to any further statement along this line, because I think he has given you an answer to your question so far, he said no.

Mr. Baillie: Perhaps I can get at it another way.

Q. When the work was completed, Captain, what orders had you from the company?

A. To proceed to Cristobal for orders.

Q. To proceed to Cristobal for further orders?

A. Yes.

Q. You were proceeding in ballast, is that correct?

A. Well, we had some ballast on board, yes.

Q. And you sailed from the repair yard on October 15th according to the log?

(Deposition of Captain Beis.)

A. October 15th, yes.

Q. Will you keep this logbook in front of you, Captain, and refer to it as you may need to refresh your [454] recollection. Was your voyage from Winslow where the ship had been repaired, to Cristobal, interrupted at any point?

A. What point do you mean?

Q. Did you or did you not have a breakdown shortly after leaving the repair yard?

A. The first place was at Port Angeles on account of steering gear.

Q. And according to the log when was that?

A. A few hours after we left.

Q. Don't you have it there on the day you sailed?

A. We sailed 3:30 a.m. October 16th.

Q. And will you describe what happened, please?

A. Well, we had a pilot on board when we left to Port Angeles, because we got a pilot out to Port Angeles, and before we were about six miles outside of Port Angeles it happened that the steering gear broke down. Then we used the emergency steering gear and we entered to Port Angeles anchorage and dropped the anchor.

Q. And did you there repair the steering gear?

A. Then I called the office of the General Steamship Company at Seattle.

Q. And what was the General Steamship Company?

A. The agent of the owner of the ship, so they

(Deposition of Captain Beis.)

called up the yard and they came by plane, the manager of the yard, that foreman of the yard and two electricians, and the port [455] engineer, Mr. Slarkie, the port engineer of the General Steamship Company.

Q. Can you tell us from your log how long you were at Port Angeles?

A. We left Port Angeles—we left the pilot 20 after 8 p.m.

Q. On what date? A. The same date.

Q. In other words this trouble occurred at 3:30 in the morning? A. That's right.

Q. And you resumed your voyage?

A. 20 after 8 the same day, p.m.

* * *

Q. Could you describe for us what type of steering gear the ship had?

A. No, I don't know anything about that.

Q. What was up in the wheelhouse, Captain?

A. In the wheelhouse we had a wheel and the other electric—what you call the other one, the telemotor.

Q. And you don't know how the two of them operated to steer the ship?

A. Well, the first one was with the telemotor at the breakdown.

Q. What are you talking about now? The handle that [456] you use to steer, is that the one you are talking about?

A. No, the other one, the wheel we used the first

(Deposition of Captain Beis.)

time. When it broke down we used the other one with the handle.

* * *

Q. Now, did you observe when or shortly after you took delivery of the ship, indents in the hull of the ship, or the deck plating?

A. Yes, they got indents. Outside in the hull you mean?

Q. In the hull.

A. In the hull outside, port and starboard.

Q. You did observe indents? A. Yes.

Q. Did you observe those same indents after the ship [457-8] left the repair yard?"

Mr. Hokanson: At this point I will object on the ground that this witness has previously testified that he had nothing to do with the specifications for repairs, and consequently any testimony that he gives here with respect to indents on the hull is not competent since it is not established by him that those matters were to be taken care of.

The Court: The objection is overruled.

"A. That's right. They fixed only one.

Q. Now, was a gangway supplied by the shipyard? A. That's right.

Q. Was there any place to stow the gangway provided? A. No.

(Deposition of Captain Beis.)

Q. When not in use what did you do with the gangway? A. I don't get that.

Q. When you were not using the gangway what did you do with it?

A. Well, we secured it some place. We secured that with ropes. I didn't have any place to store that." [459]

* * *

Q. Captain, after the difficulty with the steering gear and while you were proceeding on to Cristobal did you have any further trouble? A. Oh, yes.

Q. Will you refer to your log and tell us when that was and what it was?

A. Yes (consulting logbook), it was October 26th.

Q. And what happened?

A. Well, the chief engineer reported to me that it was necessary to stop the engines.

Q. Did he tell you what was wrong with the engines?

A. Well, not yet, because he said, "I have to change the oil," something like that; the oil was—after some hours running the engines they had to change the filters, and afterwards he reported to me that he discovered that two gears had galled. I have my position here.

Q. Where was the ship then?

A. That time?

Q. At that time.

A. Outside of the West Coast of Mexico. [460]

(Deposition of Captain Beis.)

Q. And when he reported this to you what did you do? When the chief engineer reported this condition to you what did you do, what action did you take?

A. Well, I called up the office.

Q. You called up the office? A. Yes.

Q. How did you call up the office?

A. By ship radio telephone.

Q. And what did the office tell you to do?

A. Well, the office told me to fix temporarily and then proceed to Los Angeles for further fixing.

Q. By the office you mean the office of the company, is that right?

A. The company, that is right.

Q. And did you proceed to Los Angeles?

A. No. Well, I told the chief engineer, "Try your best to do something till to go to Los Angeles for fixing," so he tries his best. Well, he said to me, "Maybe we go dead slow—slow," something like that; but after some hours he reported to me he can't give guarantee for his engine to go to Los Angeles, and if we get any place to proceed down here in Mexico to fix it, I mean the gears, because we didn't have on board spare gears."

Mr. Hokanson: I move to strike all of the answer after [461] the word "No." It is not responsive.

(Deposition of Captain Beis.)

The Court: It is granted. It is stricken and the Court will disregard it.

“Q. And then where did you go?

A. So I was about 70 miles outside of Manzanillo.

Q. And did you proceed to that port?

A. Yes. I proceeded to Manzanillo.

Q. When did you arrive there?

A. I arrived at Manzanillo 7:30 in the morning of October 28th at the pilot station; so I had a telegram from the office that they sent a service man from the Union Diesel Company with spare parts of the gear, I don't know what. He came by plane from Oakland, California.”

Mr. Hokanson: I move to strike all but the first portion ending with the semi-colon on the ground that it is not responsive.

The Court: It will have to be stricken. It is so ordered.

“Q. And did he make repairs there”? [462]

Mr. Hokanson: I move to strike the question, I object to the question on the ground that it does not relate to anything, the previous part of the answer having been stricken.

(Deposition of Captain Beis.)

The Court: I hardly think so. That will stand.

“A. Well, he came aboard and take those two galled gears and put new ones in, I mean gears, and fixed a temporary job to proceed to Los Angeles to see what happens. He came aboard the ship at Manzanillo and he put new gears in to make a temporary job till to go to Los Angeles.”

Mr. Hokanson: That is objected to as involving the conclusion of the witness with respect to what the engineer was doing and what his purpose was.

The Court: The objection is overruled.

“Q. In order to get to Los Angeles?

A. That is right.

Q. On the 5th of November did it break down again?

A. Yes, because we called the Coast Guard; something like that; it broke down. [463]

Q. When it broke down what did you do about it? Could the ship proceed under its own power?

A. When?

Q. When it broke down, could the ship proceed under its own power?

A. Well, we had on board that Union Diesel man, Mr. Cross, and he said to me, ‘Well, every few

(Deposition of Captain Beis.)

hours we can run about half an hour only to keep on the course.' ”

Mr. Hokanson: That is objected to as hearsay and not within the knowledge of the witness.

The Court: That will have to be granted.

“Q. And did you proceed under your own power?

A. No; and then they sent a tug for us, to tow us.

Q. And a tug towed you in?

A. That's right. On November 6th the tug came alongside.

Q. How long did it take to tow you into Los Angeles? When did you arrive in Los Angeles in tow of the tug?

A. On the 11th of November; from the 6th of November to the 11th of November.

Q. I show you what purports to be an invoice of [464] Pacific Tow Boat & Salvage Company, and ask you if that is your signature which appears thereon? A. That's right, sir.

Mr. Baillie: I ask that this bill be marked as Respondent's Exhibit B for Identification.

Mr. Silverthorne: I will object to the introduction of that bill on the ground that it is self-serving.

(Deposition of Captain Beis.)

(Marked Respondent's Exhibit B for Identification.)''

Mr. Hokanson: The objection made by Mr. Silverthorne is renewed at this time.

The Court: Proceed. You are not asking the Court to do anything with the exhibit, and the objection relates to the exhibit.

Mr. Howard: The exhibit will be offered later.

“Q. I believe you said, Captain, that you arrived in Los Angeles on November 11th?

A. Yes, sir.

Q. And that you left the ship on November 14th, is that correct? [465]

A. November 14th, that's right.

Q. Were you there during the time that any further repairs were being done to the ship?

A. Yes.

Q. Can you tell us generally what was being done?

A. Well, they were working down in the engine room. They also started to clean the tanks.”

Mr. Hokanson: I move to strike that last part of the answer as being outside the pleadings now, Mr. Howard having stricken it.

(Deposition of Captain Beis.)

Mr. Howard: We are agreeable to striking that portion of it.

The Court: It will be stricken. The Court will disregard it.

“Q. I show you this paper and ask you if that is your [466] signature at the foot thereof?

A. That is right.

Q. This purports to be a bill for agency services rendered to the master and crew of the Panamanian tanker motor vessel *Urania*. Did you authorize that expenditure, Captain, in instances on these bills where your name appears thereon? Did you as master of the ship authorize that expenditure? Is that correct? A. Yes.

Q. And approved the same? A. Yes.

(Bill marked Respondent's Exhibit C-2 for Identification.)”

Mr. Howard: At this time I would like to have the clerk mark for identification these exhibits that are referred to in this deposition as Exhibits C-1 to C-55.

The Court: Let them be marked Respondent's Exhibit A-9.

(55 pages of bills marked Respondent's Exhibit A-9 for Identification.)

(Deposition of Captain Beis.)

“Q. When you were at Manzanillo you were anchored, is that correct? A. That is right.

Q. And the only means of access to the ship was by launch, is that correct?

A. By launch, that is right.

Q. And a pilot was put aboard the ship?

A. That is right.

Q. By launch?

A. Yes, by launch, that is right.

Q. I am referring now to this next bill marked 3 on which there does not appear to be the signature of the captain.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent's Exhibit C-3 for Identification.)”

Mr. Hokanson: Mr. Silverthorne's objection may be premature, since the document has not yet been offered. It has merely been marked.

The Court: This document last referred to has been marked as Respondent's Exhibit A-9. Has it been offered?

Mr. Howard: We are still identifying it. [468]

The Court: I will reserve ruling on it until it is completed.

(Deposition of Captain Beis.)

“Q. At Manzanillo a pilot’s services were engaged in maneuvering the ship into the anchorage grounds? A. That’s right.

Q. And in taking her out of the anchorage grounds? A. That’s right.

Q. I am now referring to bill marked 4 which does not have the captain’s signature thereon.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent’s Exhibit C-4 for Identification.)”

Mr. Hokanson: Same objection.

The Court: Overruled.

“Q. Captain, I show you this bill and I ask you if you have any idea what that would be for? [469]

Mr. Silverthorne: May I ask at this time if his signature is on that bill?

Mr. Baillie: No, his signature is not on that bill.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent’s Exhibit C-5 for Identification.)”

(Deposition of Captain Beis.)

Mr. Hokanson: Same objection.

The Court: Overruled.

“Q. Do you know what it is, what it is for?

A. I can't explain that.

Q. You can't recall specifically, is that right?

A. That's right.

Q. I show you this bill, Captain, and I ask you if that is your signature on it? A. Yes.

Q. And this purports to be for work done at the work shop of the Naval Zone? [470]

A. Yes, the Naval—what you call that.

Mr. Baillie: On a one-inch machoule. The translator was unable to translate it at this time.

(Bill marked Respondent's Exhibit C-6 for Identification.)”

Mr. Howard: If the Court please, the various exhibits that we are talking about now are sub-exhibits under A-9.

The Court: How many of such sub-exhibits are there?

Mr. Howard: Fifty-five pages of them, Your Honor. Some of them are consolidations.

The Court: I have no way of identifying them. You are now referring in the deposition to something that is called in the deposition Exhibit C-6, are you not?

(Deposition of Captain Beis.)

Mr. Howard: Yes, Your Honor.

The Court: Is that a part of what we have marked Respondent's Exhibit A-9? I do not wish to give it another number if it is a part of A-9.

Mr. Howard: I am still referring to the exhibit now identified as A-9. [471]

“Q. I show you this bill, Captain, which purports to be for the welding of one piece of machinery. Is that your signature on the bill?

A. That is right, sir.

Q. Do you know what machinery that was?

A. It was one piece it looks like.

Q. In the engine?

A. In the engine, one piece of the engine, of that vertical.

Q. The vertical shaft?

A. Yes, they wanted to weld some piece.”

Mr. Hokanson: I move to strike that as not responsive.

The Court: “They wanted to weld some piece” is stricken and the Court will disregard it.

“Q. It was work done in the engine room?

A. In the engine room, yes.

(Deposition of Captain Beis.)

(Bill marked Respondent's Exhibit C-8 for Identification.)

Q. I show you this bill, Captain, which purports to be for services rendered to the tanker on her sailing from [472] port. Do you know what that is. Your signature does not appear thereon.

* * *

A. I don't recall that.

(Bill marked Respondent's Exhibit 9 for Identification.)

Q. I show you this bill, Captain, which purports to be for submitting entry documentation to the port captain's office. Is that your signature?

A. That is right?

Q. And the expense was incurred?

A. Yes.

(Bill marked Respondent's Exhibit C-10 for Identification.)

Q. Captain, I show you this bill which purports to be for gratification to the staff of the port captain's office for attending the sailing formalities of the vessel.

A. Yes, I remember, I signed that.

Q. No, your signature is not thereon but do you remember making the payment?

A. Yes, I remember that.

* * *

A. This is the rule; we have to pay that. We paid that. [473]

Mr. Silverthorne: What was the nature of the

(Deposition of Captain Beis.)

gratification described in that bill? What was this bill for?

The Witness: Well, there is a port captain; I mean the captain of the port; they always take overtime and we have to pay that because they are working from 9 to 12 and then they start from 3 o'clock to 7. In case I have to go some place, to the Custom House, between 12 and 3 p.m. I have to pay overtime to them.

Mr. Silverthorne: This bill does not relate to overtime. This bill relates to a gratification.

The Witness: Giving me the orders to leave.

Q. Then as I understand it this is a payment to the staff of the port captain's office for attending to the formalities of sailing your vessel at 2 p.m.?

Mr. Silverthorne: In other words, Captain, that was a tip?

Q. Was it a tip or was it a payment requested to be made? A. No, a payment. [474]

Mr. Silverthorne: A payment for services rendered?

The Witness: Yes, a payment, a payment made.

(Bill marked Respondent's Exhibit C-11 for Identification.)

Q. I show you this bill, Captain, which purports to be for the services of two mechanics, and I ask you whether that is not your signature?

A. Yes, sir, I hired them and that is my signature. I hired them through the agent's office."

(Deposition of Captain Beis.)

Mr. Hokanson: I move to strike all but the answer "Yes, sir."

The Court: "Yes, sir" may remain in and the remainder of the answer, "I hired them and that is my signature. I hired them through the agent's office" is stricken and disregarded.

"(Bill marked Respondent's Exhibit C-12 for Identification.)

Q. What work did they do?

A. Down in the engine room.

Q. I show you this bill, Captain, which purports to [475] be a contribution to the Seamen's Home, is that your signature? A. That is right.

Q. And was that contribution required by the Mexican officials? A. That is right.

(Bill marked Respondent's Exhibit C-14 for Identification.)

Q. I show you this bill which purports to be for services rendered at unloading and loading of a piece of machinery. Is that your signature, Captain? A. That is it.

Q. And the work was done? A. Yes, sir.

(Bill marked Respondent's Exhibit C-15 for Identification.)

Q. Do you know what machinery is referred to there?

(Deposition of Captain Beis.)

A. The parts went to the machine shop.

Q. I show you this bill which purports to be for car service for yourself to go to the air port to meet the engineer. Is that your signature?

A. Yes, sir.

(Bill marked Respondent's Exhibit C-16 for Identification.)

Q. I show you this bill, Captain, which purports to be for car service attending the vessel. Is that your signature?

A. That is right. [476]

(Bill marked Respondent's Exhibit C-17 for Identification.)

Q. This bill also purports to be for car service and is not signed by the master.

* * *

(Bill marked Respondent's Exhibit C-18 for Identification.)

Q. I show you this bill, Captain, which purports to be for consular fees, and I ask you whether or not that is your signature?

A. Yes, sir.

(Bill marked Respondent's Exhibit C-19 for Identification.)

Q. Captain, I show you these next three bills which purport to be for medical services and supplies, and ask you to look at them and see whether or not that is your signature on these bills?

A. Yes, sir.

(Bills marked Respondent's Exhibits C-20, C-21 and C-22 for Identification.)

(Deposition of Captain Beis.)

Mr. Silverthorne: Captain, these bills were for medical services and supplies, is that right? [477]

The Witness: That is right.

Mr. Silverthorne: What was the nature of these medical services and supplies? Why were they required?

The Witness: They were for a steward, the chief steward.

Mr. Silverthorne: And why did he require the services of a doctor?

The Witness: He didn't feel good.

Q. (By Mr. Baillie): Captain, I show you this bill which purports to be for cash advanced to you. Is that your signature on the bill?

A. That's right.

Q. Can you tell us what that cash was advanced to you for? A. Expenses.

Q. Incidental expenses?

A. Incidental expenses.

Q. Incurred at the port? A. In port, yes.

(Bill marked Respondent's Exhibit C-23 for Identification.)

Q. I show you this bill, Captain, which purports to be for stores delivered to the ship, and I ask you whether that is your signature? A. Yes, sir.

Q. Those supplies were for the consumption of the [478] crew, were they? A. Yes.

(Bill marked Respondent's Exhibit C-24 for Identification.)

Q. I show you this bill, Captain, which purports

(Deposition of Captain Beis.)

to be for work shop services on Sunday. Is that your signature? A. Yes, sir.

Q. Do you know what those services were?

A. That is when we took out the vertical shaft in the machine shop because it was a little bended. We had a vertical shaft that we took out, that the Union Diesel man took out; it was a little bit bended, and we sent it to the shop to fix it.

(Bill marked Respondent's Exhibit C-25 for Identification.)

Q. I show you a bill, Captain, which purports to be for air mail postage, mailing of correspondence to the vessel. It is not signed by you. A. No.

* * *

(Marked Respondent's Exhibit C-26 for Identification.)

Q. I show you this bill, Captain, which purports to be for postage, and I ask you whether or not that is your [479] signature? A. Yes.

(Bill marked Respondent's Exhibit C-27 for Identification.)

Q. Now bills Nos. 28 through 41 appear to be copies of telegrams sent by the agent at Manzanillo, or by Captain Beis, or by the Union Diesel repair man, and I ask that these be marked, and I will ask the captain to go through them and identify the telegrams that he himself sent.

(Telegrams marked Respondent's Exhibits C-28 through C-41 for Identification.)

(Witness reads through telegrams.)

(Deposition of Captain Beis.)

Q. Captain, you have read through these telegrams. Do you recall sending the ones to which your name is annexed?

A. I beg your pardon?

Q. You have read through those telegrams?

A. That's right.

Q. Do you recall sending those telegrams to which your name is attached in typewriting? Can you recall having sent those telegrams to which your name is annexed?

A. That is right. I was with Mr. Cross when he sent the telegrams.

Q. And they all concern either the entry of the ship into Manzanillo or the repairs to the ship done there? [480]

A. That is right. We keep the office informed.

* * *

Q. Captain, I show you this bill which purports to be for laundry work done. Is that your signature? A. Yes, sir.

(Bill marked Respondent's Exhibit C-42 for Identification.)

Q. And the expenditure was authorized by you?

A. Yes.

Q. I show you this bill which purports to be for the difference in rating of a cable sent to the General Steamship Corporation. Is that your signature? A. That's right.

(Bill marked Respondent's Exhibit C-43 for Identification.)

(Deposition of Captain Beis.)

Mr. Baillie: This bill also purports to be port agency fee and of course the captain did not sign it.

* * *

(Bill marked Respondent's Exhibit C-44 for Identification.)

Q. Captain, I show you these bills which will be numbered 45 through 55, all of which purport to be for telephone charges from Manzanillo to New York and other places, and ask you to examine those. In some instances [481] the calls are said to have been made by you. Will you check through those, please.

(Bills marked Respondent's Exhibits C-45 through C-55 for Identification.)

A. That is all right.

Q. Captain, you have examined those receipts or bills. The calls purported to have been made by you, you recall having been made by you?

A. That's right.

Q. And where your signature appears that is your signature, is that correct? A. Yes.

Q. And they were made with respect to the repairs necessary to the ship? A. That's right.

Q. Or with respect to her orders as to where to proceed and so on after she left Manzanillo?

A. Yes.

* * *

Mr. Baillie: These bills which have been marked for identification are covered by what appears to be a statement by the agent in Manzanillo. There

(Deposition of Captain Beis.)

are two other statements by the agent with bills attached, and in order to keep this lot of bills, C-1 through C-55 for Identification in [482] order, I should like to have this statement marked for identification as Respondent's Exhibit C, and then we will attach these others to it.

(Statement by agent marked Respondent's Exhibit C for Identification.)

* * *

Q. Now this next sheet lists expenses and was prepared by the agent in Manzanillo."

Mr. Howard: At this I would like to have these documents marked for identification.

(Bills #913 marked Respondent's Exhibit A-10 for Identification.)

"Q. These next three bills purport to be for launch services; they have not been signed by the master; and I ask you, Captain, to look at them and see if you can recall the services of the launches as being rendered?

(Witness does so.)

(Bills marked Respondent's Exhibits D-1, D-2 and D-3 for Identification.)

A. I can recall. [483-4]

(Deposition of Captain Beis.)

* * *

Q. I show you this bill, Captain, which purports to be for pilotage service. Your name does not appear on the bill. Can you recall that service having been rendered? A. We paid for the pilot.

Mr. Silverthorne: Do you remember if this bill represents the amount you paid for the pilot?

The Witness: Well, I cannot remember exactly; we have so many bills to sign.

Mr. Silverthorne: You can't remember this bill exactly?

The Witness: Not exactly.

(Bill marked Respondent's Exhibit D-4 for Identification.)

* * *

Mr. Baillie: Bills Nos. 5 and 6 have not been signed by the Captain either. These may be duplicates of bills previously entered, and I ask the reporter to mark them for identification subject to check with bills previously submitted.

(Bills marked Respondent's Exhibits D-5 and D-6 for Identification.)

* * *

Q. I show you this bill, Captain, which purports to be for extraordinary services rendered on sailing from port [485] by the Public Health Service. It has not been signed by you. Do you remember those services having been rendered?

(Deposition of Captain Beis.)

A. No.

(Bill marked Respondent's Exhibit D-7 for Identification.)

* * *

Q. Nos. 8 and 9 were not signed by you, Captain. Let me ask you generally, Captain, when you put into Manzanillo you had to take a pilot aboard and you incurred certain pilotage charges. You then had to enter the ship's documents in the Custom House? A. Yes.

Q. Or whatever the procedure is there?

A. Yes.

Q. You incurred certain charges at that time, and subsequently on departure of the ship you incurred other charges, is that correct?

A. That is right.

Q. In these instances where these bills have not been signed by you it means that the payments were presumably made by the agent, is that correct?

A. That's right.

(Bills marked Respondent's Exhibits D-8 and D-9 for Identification.) [486]

* * *

Mr. Baillie: No. 10 purports to be for traffic dues. This has not been signed by the master either.

(Bill marked Respondent's Exhibit D-10 for Identification.)

* * *

(Deposition of Captain Beis.)

Mr. Baillie: I ask that these bills numbered 11 to 29, inclusive, be marked for identification.

(Bills marked Respondent's Exhibits D-11 through D-29 for Identification.)

* * *

Q. This is the agent's account sheet to which is attached one receipt, and this purports to be for freight and carriage of a box of repair parts. Do you recall, Captain, receiving the repair parts aboard the ship? Your name does not appear on the receipt. All I am asking you is, do you recall receiving the repair parts on board the ship?

A. Yes.

Q. That is all you would know about it?

A. That is all.

(Account sheet and receipt marked Respondent's Exhibits E and E-1 for Identification.)"

Mr. Howard: I might state that we will offer additional proof on these exhibits. [487-8]

The Court: Let this one be marked A-11.

(Bills #908-A marked Respondent's Exhibit A-11 for Identification.)

"Mr. Silverthorne: You don't remember if that bill was specifically the charge for carrying these repair parts aboard the ship?

The Witness: I don't remember that.

Mr. Silverthorne: You don't remember that bill?

(Deposition of Captain Beis.)

The Witness: No.

* * *

Q. Captain, will you explain to us why you left the ship in Los Angeles? Was there any reason for it? A. Well, to get married.

Q. In other words you requested to be released?

A. Yes.

Q. In order to get married, is that correct?

A. Yes.

Q. Captain, to go back to the time that the ship was undergoing repairs at Winslow, was there any occasion upon which the crew of the ship interfered with the progress of [489] the work by shipyard employees?"

Mr. Hokanson: That is objected to as not relevant.

Mr. Howard: I think it is a proper question, if the Court please.

The Court: I think there is something left out of the question. I believe the verb "were" should be inserted before the word "interfered" in order to understand the question.

"A. The crew——

Q. Was there any time when the crew of the ship, your men, were doing work aboard the ship which you have said consisted mainly of painting top sides, that that work interfered with whatever work was being done by the shipyard people?"

(Deposition of Captain Beis.)

Mr. Hokanson: I object to that on the ground that that is not within the knowledge of the witness, and he is therefore incompetent to answer the same.

The Court: He did answer it in the negative, and no harm comes from that particular answer, so the objection is overruled.

“A. No.

Q. Was any complaint made to you by ship-yard people that there was any interference?

A. Never.

Q. Your answer is never, is that correct?

A. Yes.

Mr. Baillie: That is all.

Cross-Examination

By Mr. Silverthorne:

Q. Captain, when you left Puget Sound, Seattle, what were your scheduled ports of call?

A. Well, I had orders to proceed to Cristobal for further orders.

Q. I don't think you made it clear before if you were carrying cargo when you left Puget Sound. Were you carrying cargo when you left Puget Sound? A. We left in ballast.

Q. And you didn't call at any port prior to the breakdown off the Coast of Mexico near Manzanillo that you have testified to, is that right, you didn't call at any port? A. No.

(Deposition of Captain Beis.)

Q. What weather conditions did you encounter on board the *Urania* immediately prior to this breakdown? [491]

A. What kind of weather we had?

Q. Yes. A. Well, good weather.

Q. It was good weather?

A. Good weather.

Q. There was nothing unusual about the weather? A. No, it was good weather.

Q. It was very warm at this time, unusually warm? A. No, not so warm.

Q. Now, when you arrived at Los Angeles which shipyard did you go to?

A. What you call it, Craig Shipbuilding Company.

Q. And what was the date that you arrived at the shipyard? A. The 11th of November.

Q. And how long were you at the shipyard?

A. Well, I was only two days; then I left the ship.

Q. And you left the ship on November 13th?

A. 14th.

Q. Did you go to San Pedro?

A. Yes, San Pedro; went to San Pedro.

Q. And the Craig Shipbuilding Company is at San Pedro?

A. San Pedro, yes. No, not San Pedro.

Mr. Baillie: Refer to the logbook, Captain.

A. (Consulting logbook): San Pedro, yes.

Q. Then the Craig Shipbuilding Company was

(Deposition of Captain Beis.)

located in [492] San Pedro, and you went there first, is that correct? A. I didn't get that.

Q. Then the Craig Shipbuilding Company was located in San Pedro and you went there first, is that correct?

A. Yes, San Pedro, that is right, I mean the Craig Shipbuilding Company.

Q. You went to the Craig shipyard first?

A. Yes.

Q. Located in San Pedro?

(No answer.)

(Discussion off the record.)

Q. Did the Urania dock at San Pedro at any time?

A. We anchored at San Pedro anchorage, and then we docked at the Craig shipyard.

Q. In other words you anchored first at San Pedro? A. Yes.

Q. And then went to the Craig Shipbuilding Company in Long Beach? A. That's right.

Q. That is correct? A. That is correct.

Q. How long did you anchor at San Pedro?

A. We dropped anchor at 20 minutes after 10.

Q. On what day?

A. The date of the 11th.

Q. November 11th? A. Yes. [493]

Q. And when did you leave San Pedro?

A. On the same day, 12:30.

Q. Did you proceed directly then to the Craig Shipbuilding Company yard in Long Beach?

(Deposition of Captain Beis.)

A. Yes, in Long Beach, that is right. The Pacific Retriever took us in.

Q. Did you take on any cargo at San Pedro during this time? A. No.

Q. When the Urania was at Long Beach, California, do you know the company or the individuals who made the repairs to the ship there, what company repaired your vessel there, repaired the Urania there? A. You mean at Long Beach?

Q. At Long Beach?

A. I know that for the engine came down that Union Diesel Company. I don't know about the other repairs.

* * *

Q. Captain Beis, you don't know of your own knowledge, you don't actually know yourself what caused this breakdown at sea, do you? The engineer knew but you didn't know?

A. No, I don't know anything about it.

Q. You don't know actually what parts they replaced or repaired at Manzanillo or Long Beach, do you?

A. At Manzanillo I know only two gears. [494]

Q. But you don't know what the gears were?

A. No, I don't know anything about it.

Q. When you described earlier the things that you found wrong with the ship after it left Puget Sound, you don't know actually of your own knowledge what caused them to go wrong, do you?

A. No, I don't know.

(Deposition of Captain Beis.)

Q. You don't actually know of your own knowledge, Captain, what maintenance procedure or what procedure they followed in the engine room department? That was under the province of the engineer, was it not?

A. Yes, I don't know anything about it.

Q. You don't know anything about what maintenance proceedings were followed in the engine-room? A. No.

* * *

Q. How far from Manzanillo were you when this breakdown occurred?

A. I was about 70 miles.

Q. And you proceeded 70 miles to Manzanillo?

A. I have my position here (referring to log-book).

Q. About 70 miles approximately? Right?

A. Approximately.

Q. And you traveled to Manzanillo under your own power? [495] A. That's right.

Q. Do you know how many gallons of fuel you used on that trip to Manzanillo?

A. No, that is the engineers.

Q. You have no knowledge? A. No.

Q. Do you know about how many gallons of fuel oil the ship consumed at any given speed?

A. That is the engineers; the engineers would know that.

Q. Do you know who furnished the Urania additional fuel which was re-supplied at San Pedro?

(Deposition of Captain Beis.)

A. I don't know.

Q. Or at Long Beach?

A. I don't know at Long Beach.

Q. Do you know the name of the agency at Los Angeles, the steamship agency you used?

A. Yes.

Q. What was it?

A. It was General Steamship Corporation, Ltd., something like that.

Q. Do you know what expenses the Urania had at Long Beach other than the expenses for repairs?

A. No, I don't know.

Q. You were only there two days?

A. Only two days, yes. [496-7]

* * *

Q. The expenses that you authorized were on the whole ordinary expenses of a ship in port, is that correct? A. That is right.

Q. With the exception of certain expenses for machinery repair? A. Yes.

Q. For example, the payment for medical expenses which has been identified as Respondent's Exhibits C-20, C-21 and C-22 for Ident., those were medical expenses for the chief steward, is that correct? A. That is right.

Q. And his sickness was in no way connected with the breakdown of the ship and its deviation to Manzanillo, is that correct?

A. Well, I don't know about that, because when

(Deposition of Captain Beis.)

we left from Seattle he was good.

Q. But his sickness was not caused by the breakdown and the deviation to Port Manzanillo, was it?

A. No.

Mr. Baillie: Counsel will concede that it was not?

Mr. Silverthorne: I will rest there on cross-examination. [498]

Redirect Examination

By Mr. Baillie:

Q. Did I understand you correctly that you were in ballast from the time you left Winslow until the time you arrived at the Craig Shipbuilding Company at Long Beach?

A. No, before we got in we took the ballast out.

Q. But I mean you took no cargo at any of your stops?

A. No cargo.

* * *

Q. Who relieved you as captain from Los Angeles?

A. Captain Nicholas Helmis.

Q. When did he relieve you? When did he arrive in Los Angeles? What I am getting at, did he arrive before he relieved you, or did he arrive at the time he relieved you?

A. He came aboard to relieve me.

Q. Captain, did you carry ballast in the fore-peak tank as well as in the regular cargo tanks of the ship when you left Puget Sound?

A. We carried fuel oil.

(Deposition of Captain Beis.)

Q. You carried fuel oil in the forepeak tanks?

A. No, behind the forepeak tank, after the forepeak, that ballast tank we made for fuel oil tank. They fixed that in Seattle, Winslow.

* * *

Q. In your arguments or disputes that you have previously testified to with the employees of the ship repair yard during the progress of this work, was there any time when you were afraid of physical violence?"

Mr. Hokanson: If the Court please, I object to that question as not being relevant or connected with the issues in this case.

The Court: How does the relevance of that matter appear?

Mr. Howard: If the Court please, there is a question as to the manner in which some of this work was performed by Commercial Ship Repair yard. It might appear from the testimony of this witness that they were threatened in such a way that it would have a bearing on whether they accepted work in the condition in which it was found when the ship was tendered to them by the yard on completion of the job.

Mr. Hokanson: I think that is rather a far stretch of relevancy. There has been no issue injected into this case of coercion. That is a matter that should have been pleaded; that is the only way

(Deposition of Captain Beis.)

in which it might have any relevancy at all.

The Court: The objection that it was not raised on cross-examination and is not a proper subject for [501] redirect examination is raised by Mr. Silverthorne.

Mr. Hokanson: Yes, I renew that.

The Court: Each and all the objections are sustained.

“Recross-Examination

By Mr. Silverthorne:

Q. Captain, this was the first time that you had ever commanded a diesel powered vessel, is that correct? A. That is right.

Q. So the Urania, the type of the Urania that you have been describing was your first experience with a diesel powered vessel?

A. A diesel powered vessel, that is right.

(Deposition closed).”

The Court: At this point we will suspend the proceedings for today. All those connected with this case are excused until Monday morning at 10:00 o'clock in the forenoon.

(At 4:05 o'clock p.m., Saturday, April 9, 1949, proceedings adjourned until 10:00 o'clock a.m., Monday, April 11, 1949.) [502]

April 11, 1949, 10:00 o'Clock A.M.

Mr. Howard: The cross-libelant would now like to read the deposition of Mr. Baxevanis.

The Court: Before you actually begin that, would it be possible for you to call today, on both sides, all of the out-of-town witnesses you may be expecting to call? If you did that, would you be doing so out of order?

Mr. Howard: We have one witness, your Honor, from out of town who has not yet arrived. We expected to call him today but he will not be able to be present today. He has to come from some distance and it would be taking that witness out of order insofar as the cross-libelant's case is concerned.

The Court: I will not make the requirement. I was just hoping to accommodate out-of-town witnesses as soon as possible. I prefer, if consistent with the convenience of litigants and the convenience of the witnesses themselves, to call them in the order in which they are supposed to be called, but I am also anxious to avoid the possibility of counsel becoming embarrassed in the proceeding by inconveniencing [503] by out-of-town witnesses.

You may proceed with the reading of the deposition. Will it be convenient for Mr. Hokanson to read the answers? It affords a better opportunity to to opposing counsel to note objections. If counsel are agreed as to the propriety of taking the deposition, you may commence with the first question on direct examination.

Mr. Howard: That will be the last line on page 68.

DEPOSITION OF MR. BAXEVANIS

“Direct Examination

By Mr. Baillie:

Q. Chief, will you tell us what your experience has been with diesel motors and as an engineer on board various ships?

A. I have worked on board ships as a chief engineer for the last 10 years.

Q. Beginning in about 1916, was it, that you had something to do with diesel motors?

A. Yes, I started to work with those motors in the shop in Rumania, and at that time I could freely work in that line.

Q. By whom were you employed?

A. I was working at that time for the European Danubian Commission, which was its official name.

Q. You worked in machine shops, and did you also go [504] on board their boats? A. Yes.

Q. What type of boats did they have?

A. Well, they had dredgers; they had small motors; they operated those towboats.

Q. What we call tugs, did they have those?

A. Yes, tugs, that is right.

Q. Did you work as an engineer on board the tugs? A. Yes.

Q. They were diesel powered?

(Deposition of Mr. Baxevanis.)

A. Well, the smaller boats or vessels were powered by diesel motors, and the larger vessels were powered by steam engines.

Q. And how long did you stay with the European Danubian Commission?

A. Well, I was a young man when I was working with that Commission. I believe I worked for them about 6 or 7 years.

Q. And after that what did you do?

A. After that I went to Italy.

Q. And worked for whom?

A. I worked as engineer on board Italian vessels.

Q. Were they diesel powered?

A. They had steam engines then. I worked also on board a vessel which had diesel engines.

Q. Did you go to school in Italy? [505]

A. Yes, I went to Preparatory School in Naples, headed by Francesco Imperato.

Q. What did you study there?

A. I studied there motor engines, diesel engines.

Q. How long were you at that school?

A. Well, I took a preparatory course of 18 months, which I completed.

Q. And after you got out of the school what did you do?

A. I continued to work also always as an engineer on board the Italian vessels.

Q. Did you acquire an engineer's license?

A. I was authorized to do work as an engineer,

(Deposition of Mr. Baxevanis.)

I didn't have the actual license. In Italy it was necessary to be an Italian citizen to have a Government license.

Q. How long did you continue to work on Italian ships?

A. I worked from 1920 until about 1931 or 1932.

Q. And in 1931 or 1932 what did you do?

A. Then I went back to the Danube River and I worked with the Anglo-Danubian Company, which was a transportation company.

Q. And what did you do for them?

A. I was chief engineer for them.

Q. What sort of ships did you sail on?

A. I was a chief engineer on the Princess Elizabeth, one of their vessels, which was diesel powered.

Q. The Princess Elizabeth sailed back and forth along the Danube, is that correct?

A. Yes, we traveled the entire length of the Danube, in the navigable part of the Danube down to Istanbul, at which port the English took it over.

Q. Was this a type of tug that towed barges?

A. Well, it was the biggest tug on the Danube.

Q. What was the power of her engines?

A. 2800 horsepower.

Q. How many engines did she have?

A. Three engines with three propellers.

Q. What is the horsepower of the engine of the Motor Tanker Urania?

A. 560.

Q. How long did you stay with the Anglo-Danubian Company?

(Deposition of Mr. Baxevanis.)

A. I worked with them from 1935 until about 1941 when Anglo-Rumanian relations were broken off.

Q. And what did you do then?

A. Well, I was deprived of my liberty on account of some sabotage operations, and then finally I succeeded in escaping and I went to Egypt where I was finally employed in the Greek Navy.

Q. You talk about sabotage operations. Under whose orders did you carry that out? [507]

Mr. Hokanson: I object to the question on the ground that it is not relevant to the proceedings here, Your Honor.

The Court: What is the relevancy?

Mr. Howard: By this examination, we are attempting to qualify this witness and show his past experience. He has spoken in the previous answer about sabotage operations. I think it would be very important for the Court, in the Court's mind, to have the matter cleared up as to what sabotage operations he was working in, to show whether he was working for an enemy or whether he was working with a friendly country in these sabotage operations.

The Court: Does it have any bearing upon the possibility of inferences being made concerning whether or not the damages alleged in the cross libel were sabotage damages or some other kind?

Mr. Howard: No, Your Honor, but it does go as to the credibility of the witness, and he has been testifying as to his qualifications. It seems to me,

(Deposition of Mr. Baxevanis.)

having testified as to a certain element of sabotage operations here, it is important for that to be cleared up in the mind of the Court as to his credibility.

There is no contention, if the Court please, that there are any sabotage operations involved in the tanker *Urania*.

The Court: Either as to matters stated in the libel or cross libel?

Mr. Howard: That is my understanding. Am I correct in that?

Mr. Hokanson: I don't think it is specifically pleaded, Your Honor. This matter is injected into the case on direct examination. I feel it has no part in the case.

The Court: The objection is overruled.

While we are so interrupted, may I ask if counsel can agree on the capacity in which this witness served the *Urania* during the times of the alleged occurrences mentioned in the cross-libel?

Mr. Hokanson: I believe, Your Honor, it will be established that he was the chief engineer.

The Court: What do you think he was?

Mr. Howard: The chief engineer. Your Honor.

“A. Well, we were together with the English against the Germans.

Q. Now when you went with the Greek Navy what did you do?

A. I was an officer-engineer in the Navy. [509]

Q. Where were you stationed?

(Deposition of Mr. Baxevanis.)

A. Well, in some cities of Egypt, Alexandria, Port Said.

Q. After your experience in the Greek Navy when did you go to sea again on commercial ships?

A. That was in 1947 with the same company, Compania Naviera Limitada.

Q. You mean by the same company, the company with which you are now associated?

A. Well, I was working on the *Urania*, I was taken off the ship here at New York in order to work with that company.

Q. In 1947 you became employed by Compania Naviera Limitada of Panama, is that correct?

A. Yes. I was taken to work with that company.

Q. And in 1947 when you were employed by this company what did you do?

A. I started to work on the ship *Perla* as second engineer.

Q. And you stayed with the *Perla* until you were taken off the *Perla* to become chief engineer of the *Urania*, is that right?

A. Yes.

Q. Did you join the *Urania* when Compania Naviera Limitada of Panama acquired the ship from the U. S. Navy?

A. Yes. [510]

Q. You joined her when Captain Beis joined her, is that correct?

A. Yes.

Q. What was the engineroom complement of the *Urania*?

A. There were still aboard at the time I took

(Deposition of Mr. Baxevanis.)

charge three engineers and one wiper.

Q. When you say still aboard you mean they accompanied you when Captain Beis took the ship over from the United States Navy?

* * *

Q. When you say they were still aboard will you explain what you mean by that?

A. I mean to say that when I went aboard I was to the first engineer or chief engineer; then I had the first assistant, second assistant, third assistant, and there was a wiper also.

Q. Did the first, second and third assistant engineers and the wiper go aboard the ship with you?

A. Yes.

Q. In other words, they were employees of the owner of the ship?

A. Yes.

Q. Can you tell us anything about the experience of the first, second and third assistant engineers?

A. Well, they also had had experience with motor engines. [511]

Q. Chief, aboard the *Urania* you kept a log, as is done on most ships, is that correct?

A. Yes."

Mr. Howard: At this point I would like to have the two engineroom logs marked for identification.

The Court: Do you think one of you will have an objection as to one that will not apply to the other?

(Deposition of Mr. Baxevanis.)

Mr. Howard: I will have none, Your Honor.

The Court: Do you see any reason why they should not be the same exhibit?

Mr. Hokanson: Your Honor, I note that the log, at least one of them, covers a period not relevant to the proceedings here.

The Court: Is that true of both logs or just one?

Mr. Hokanson: At least one.

The Court: Would that not be true of almost any logbook?

Mr. Howard: Yes, Your Honor. I thought that they together combine to make up the period we are concerned with in the libel and cross-libel. If I am mistaken, I will withdraw one of the logs if it does not cover that period.

Mr. Hokanson: Each of them, as I examine them, covers a period not specifically relevant. [512]

The Court: Let them be marked separately. That one which covers the earlier period will be marked A-12.

Mr. Howard: I would like to have the book showing on its cover that the log starts as of July 30, 1948, marked with the first number.

The Court: A-12 will be the number which that will have.

(7-30-48 engineroom logbook marked Respondent's Exhibit A-12 for Identification.)

Mr. Howard: And the book showing that it is a continuation of the same log starting on October 29, 1948, marked with the second number.

(Deposition of Mr. Baxevanis.)

(10-29-48 engineroom logbook marked Respondent's Exhibit A-13 for Identification.)

“Q. I show you these two books and ask you to examine them and tell me what they are?

A. Those are the engineroom logbooks. The first entry here in the engineroom log on July 30, 1948, states simply in Greek that when the vessel was delivered to us everything had been put in place on board.”

Mr. Hokanson: I move that the last part of the answer be stricken on the ground that it is not responsive.

Mr. Howard: I submit the entire answer is responsive.

The Court: The objection is overruled.

“Q. Who kept these logs? Who wrote in them?

A. I did.

Q. Are all of the entries throughout the logs made by you?

A. Yes, in my own handwriting.

Q. And your name appears at the bottom?

A. Yes.

Mr. Baillie: I ask to have these two logs marked Respondent's Exhibits F and G for Identification.

* * *

(Logbooks marked Respondent's Exhibits F and G for Identification.)

(Deposition of Mr. Baxevanis.)

Q. Chief, did you know that on October 13, 1948, the [514] M/T Urania was attached under legal process out of a court in Seattle, Washington?

A. Yes.

Q. You did know that? A. Yes.

Q. Were these logs, Chief, kept in the regular course of the ship's business?

A. Yes; these books contain happenings connected with the engineroom. The deck log was kept by the captain.

Q. When you made these entries was there ever any thought in your mind that the ship had been attached under legal process?

Mr. Silverthorne: I am going to object to the question. He was already answered."

Mr. Hokanson: I object to the question, Your Honor. The objection registered by Mr. Silverthorne is renewed at this time.

The Court: The objection is overruled.

"A. I knew that it had been attached for two or three days, then the attachment was lifted and we sailed away.

Q. Did the fact that you knew the ship had been attached have any effect upon the entries you made in [515] these logs?

Mr. Silverthorne: Same objection."

Mr. Hokanson: Same objection, Your Honor.

The Court: Overruled. I do not understand

(Deposition of Mr. Baxevanis.)

why the cross-respondent would make an objection to that subject matter. I think it would be more material from the cross-respondents' point of view than any other.

“A. No, it did not affect me at all. These books, engine logs, contain a record of the work I did in the engineroom, and what was consumed. I had nothing to do with administrative matters. Those books had to do only with what was going on in the engineroom.”

Mr. Howard: I offer Cross-Libelant's Exhibits A-12 and A-13.

Mr. Hokanson: The objection heretofore made, Your Honor, to the introduction of these logs based upon the theory that litigation was known to the person making the entries at the time, who was an employee of the [516] claimant corporation, and to that extent his entries could be influenced by knowledge of that litigation——

The Court: The prima facie proof on the direct examination is that each of the exhibits was made in the ordinary course of the ship's business. The subject matter of the objection may go to the weight of the evidence, but does not seem to the Court to go to the admissibility, and the objection is overruled. A-12 and A-13 are now admitted.

(Respondent's Exhibits A-12 and A-13 received in evidence.)

(Deposition of Mr. Baxevanis.)

“Q. Chief, the *Urania* has a diesel motor as her main engine, is that correct?

A. Yes, sir, Union Diesel. [517]

Q. I would like you to draw for me in not too great detail but an outline sketch of the main power plant of the M/T *Urania*, which you say is a diesel engine, showing how many cylinders it has?

(Witness draws sketch.)”

The Court: May it be appropriately marked by the clerk in his system of marking?

Mr. Howard: For the sake of expediency, I will now segregate these several diagrams which I believe could all be marked at this time.

The Court: Could they all be marked by one overall number with sub-numbers for each? Are they all going to be proved by this witness, if they are going to be proved by anyone, and do they illustrate this witness' testimony?

Mr. Howard: That is correct.

The Court: Let them all be marked A-14, and the first one will have (1) following the 14, and the next one (2), etc., successively.

(Drawings marked Respondent's Exhibit A-14 (1), A-14 (2), A-14 (3), A-14 (4) and A-14 (5) for Identification.)

Mr. Howard: They are marked for identification [518] I, J, K, L and M, omitting N, which pertains to a claim which has been eliminated from the case.

(Deposition of Mr. Baxevanis.)

Mr. Hokanson: May I ask on what page the exhibits appear?

Mr. Howard: It is on page 113.

The Court: These references in the deposition to these exhibits appear to use capital alphabetical letters for the identifying mark of the exhibit.

Mr. Howard: These are the five exhibits referred to in the deposition by I, J, K, L and M for identification.

“Q. You have drawn a sketch which I take it is a view from overhead as though you were looking down on the engine, is that correct?

A. Yes, that's right.

Q. To your right I should imagine is toward the forward part of the ship, is that correct?

A. Yes, that's right. This is the fore part of the ship. (Interpreter writes 'Fore part' on diagram.)

Q. And to your left would be aft, is that correct?

A. Yes (indicating same on diagram).

Q. Does this represent the main crank shaft?

A. That is the fly wheel, and then comes—I mean [519] further aft comes the thrust shaft.

Q. Will you draw an arrow from this fly wheel and mark it down below so that when they read the record they will know what we are talking about.

(Witness writes in Italian and Interpreter writes “Fly wheel” in parenthesis.)

Q. The cylinders are numbered 1, 2, 3, 4, 5, 6?

A. Yes.

(Deposition of Mr. Baxevanis.)

Q. From fore to aft? A. That is right.

Q. Now this outside heavy line that you have drawn, that would represent the block, is that correct?

A. Yes, that is the casing or block and is attached by this (indicating).

Q. Those little circles that you have drawn around are the bolts that attach it to the floor?

A. This represents the screws.”

Mr. Howard: The witness was referring to what has been marked for identification as A-14(1). I will offer all of them in a group after the entire group has been identified.

“Q. And then perhaps we had better have another view [520] of this looking from either side say you are standing on the starboard side and looking port, what would you see when you look at it?

Mr. Baillie: The witness has drawn a diagram showing the side view of the engine looking from the starboard side toward the port side.

Mr. Baillie: I offer this first sketch for identification as Respondent's Exhibit I.

(Diagram marked Respondent's Exhibit 1 for Identification.)

Q. What are those squares that you have drawn on the block there in the second sketch?

A. Those are the lids or covers for the purpose

(Deposition of Mr. Baxevanis.)

of opening the carter, and then within the carter there is the shaft of the motor.

Q. The dotted line you are drawing now indicates the crank shaft, is that correct?

A. Yes, that's right, the crank shaft. The crank shaft is represented by the dotted line, and here are the pistons (indicating).

Q. How do you start this type of motor?

A. There is a system by which the engine is started by compressed air.

Q. And what does that operate on?

A. Here there is an air system or air distributor which gives the first movement to any of the cylinders shown on the drawing.

Q. The compressed air works on what?

A. The effect of the compressed air here is that of pushing downward any piston of any of these cylinders.

Q. And that would work on the crank shaft, is that right?

A. Then the combustion pumps would go to work and we have combustion.

Q. Once the air compressor sent the compressed air into the cylinder chambers and started your pistons moving, and in turn they start the crank shaft moving, then what causes the continuous exploding of the engine? Will you tell me what happens then?

A. The vertical shaft here transmits its motion to the cam shaft.

Q. Will you mark aft on there, please?

(Deposition of Mr. Baxevanis.)

(Witness writes in Italian and Interpreter writes "Aft" in parenthesis in English.)

Mr. Baillie: I offer this drawing for identification as Respondent's Exhibit J.

(Drawing marked Respondent's Exhibit J for Identification.)

Q. Will you draw the vertical shaft for us, please?

The Interpreter: The witness has drawn a [522] sketch of the vertical shaft.

Q. These rectangles on which you have drawn slanting lines, what are they?

A. These are sections here rectangular in shape showing the inside of the shaft.

Q. The inside of the shaft? A. Yes.

Q. Well, this one here, what is that?

A. That is a gear.

Q. Will you please draw a line from here and mark that "Gear."

The Interpreter: The witness writes the Italian word for gear and I put in parenthesis "Gear."

Q. What is this box?

A. That is the governor or regulator.

Q. Will you draw a little line from that and put "Governor"?

The Interpreter: The witness writes in Italian "Governor" and in parenthesis I write the word "Governor" in English.

Q. This is a gear at the top of the shaft, is that right, too? A. Yes.

Q. Will you write in "Gear" there, too?

(Deposition of Mr. Baxevanis.)

The Interpreter: The witness writes in Italian "Upper gear" and I put in in English [523] "Upper gear" in parenthesis.

Q. Now it is obvious from this sketch that your crank shaft turning around will turn this gear, which appears to be vertical in your sketch, which in turn will turn this gear which is horizontal in your sketch, is that right?

A. The crank shaft here propels the shaft here, which in turn propels the lower gear, and the lower gear in turn operates and propels the upper gear.

Q. By means of this vertical shaft?

A. Yes, by means of the vertical shaft.

Q. What does the upper gear turn? Is that connected to something else?

A. It is connected with the cam shaft and causes it to move.

Q. Will you draw in the cam shaft on that drawing?

The Interpreter: The witness has drawn the shaft and six cams.

The witness writes in Italian "Cam" and I write in English in parenthesis "Cam."

Q. And these cams in some way affect the timing of the explosions in the cylinders?

A. Yes, these cams regulate or govern the explosion and the combustion.

Q. How are these gears lubricated, Chief?

A. The upper gear here is lubricated by the same system [524] that lubricates the lower gear; that is by oil pump.

(Deposition of Mr. Baxevanis.)

Q. Are these encased in any sort of an outer covering? A. There is a casing, yes.

Q. And the oil is in the casing, is that right?

A. No, the oil comes from some small tubes which pour into the carter. There is a tube there or pipe, and the oil goes into the casing here. There is more than one tube from which the oil flows into the gear; and the same thing in connection with the lower gear.

Q. That is lubrication oil you are talking about?

A. Yes, the same oil which lubricates the entire shaft of the engine.

Q. How does that oil get into the tubes which in turn carry the oil to these gears?

A. These tubes communicate with a pump and the pump sends the oil into the tubes.

Q. And where is the pump located?

A. The pump is located here (indicating), near the lower gear of the vertical shaft. It is in the position engaged with the lower gear.

Q. This is the pump you are talking about to force oil into the tubes which in turn carry it to the gear?

A. The pump receives the oil from the carter, from here (indicating). It sends the oil into the filter. Then there is another pump called a double pump, and that double [525] pump pushes the oil with a pressure of 20 pounds, about.

Q. Now this oil that is coming through the pump and being forced into the tubes and then forced unto the gears is not constantly new oil, is it?

(Deposition of Mr. Baxevanis.)

A. No; it is of course the same oil, it goes back into the filter, it is cooled again and then goes around again.

Q. Does the oil have to be cooled at some point?

A. Yes, of course it has to be cooled because when the oil goes to the gear it has to absorb a certain temperature, and the cooling makes that possible.

Q. How is it cooled?

A. There is a radiator. The oil goes into a radiator in which there are some tubes. Then the cold water of the sea cools the oil.

Q. Is there some confusion in the word radiator here; we think of the word radiator as meaning something that heats.

A. Well, I call the radiator the cooler because it is the same shape. It is the same system you have in your automobiles, you call it a radiator and we call it a radiator, too. In the case of the automobile you have cool air. In this case you have the seawater which cools the oil.

Mr. Baillie: I offer for identification this last sketch that the witness has drawn as Respondent's Exhibit K.

Sketch marked Respondent's Exhibit K for [526] Identification."

Mr. Howard: In this particular reference he was referring to a side view, Exhibit K, which I believe carries the court's identification A-14 (3).

(Deposition of Mr. Baxevanis.)

“Q. Where is this cooler located?

A. It is on the port side. This is the view from the starboard side (indicating), and the radiator cooler is on the port side.

Mr. Baillie: We are referring now to Respondent's Exhibit J for Ident.

Q. Will you draw me, please, a sketch of this cooler that you are talking about? Give us some idea what it looks like.

(Witness draws sketch.)

A. The seawater comes from here (indicating).

Q. That is from the lefthand side of the page as you are looking at it?

A. That's right. There is a diaphragm here in the radiator, and the seawater goes through that diaphragm and then comes out this way (indicating to the right of the drawing). The oil comes from here (indicating). [527]

Mr. Baillie: Witness indicating from the right-hand side over to the lefthand side of the drawing.

Mr. Silverthorne: I think we ought to have the drawing marked top and bottom so as to identify it.

The Interpreter: The witness writes in Italian and I write in English in parenthesis “Top part” and “Bottom part.”

Mr. Baillie: Will you put here lubricator, oil cooler, or whatever it is.

The Interpreter: The witness writes in Italian

(Deposition of Mr. Baxevanis.)

and I write in parenthesis in English "Oil pipe" in two places, and "Sea water" in two places.

Mr. Silverthorne: I think you ought to mark the oil cooler.

The Interpreter: The witness writes in Italian and in English also "Oil Cooler."

Q. The sketch you have drawn is of the exterior of this oil cooler, is that correct?

A. Well, this is not the complete drawing of the section, it purports to show the inside of the cooler.

Q. You show here the oil pipe entering from the right as you look at the sketch, and then it would appear from this drawing that the oil simply emptied into a more or less [528] square chamber and then flowed out through another pipe at the left as you look at it. I shouldn't imagine that could be true, could it?

* * *

A. I have shown on the drawing these compartments. The oil goes through these compartments in the drawing. The lines I have drawn are compartments.

Q. Will you explain what you mean by these compartments.

Mr. Baillie: The witness draws a little square on the diagram with a number of circles.

A. These small circles represent the openings of the tubes or pipes. Through these openings goes the oil. Then on the other side, on the opposite side the seawater comes in to cool it.

(Deposition of Mr. Baxevanis.)

Mr. Silverthorne: I think we ought to identify what the witness has drawn just now.

Q. The sketch you have drawn shows a cross-section of the cooler as you look down on it, is that correct? A. That is right.

Q. And we are referring to the sketch at the lefthand side of the page? A. That's right.

Mr. Baillie: So there will be no mistake I offer this sketch for identification. [529]

Marked Respondent's Exhibit L for Identification.

Q. These little circles you have drawn in that part of Respondent's Exhibit L for Identification which is to the left, represents tubes, is that correct?

A. I have drawn an almost round opening of the tube, but the actual shape of the opening is like this.

The Interpreter: Indicating an oblong shaped opening.

Q. You are now making sketches over the circles which were first drawn?

A. Yes, I have connected the round openings and made an oblong shape now. Across the oil tubes there are the tubes which carry the seawater which cools the oil in the tubes.

* * *

The Interpreter: Witness has drawn an arrow showing the direction from which the oil flows into the tubes, and he has drawn also another arrow

(Deposition of Mr. Baxevanis.)

showing the direction from which the seawater comes into the other set of tubes, the purpose of which is to cool the oil.

Q. Chief, is my understanding correct from what you have just said that within this cooler which I assume has an outside casing around it—— [530]

A. I have drawn all of the inside part.

* * *

A. I have drawn all the inside part, that is the cooler or radiator itself, but there is a casing.

Q. And within this casing, there are two sets of tubes, is that correct?

A. The inner part of the tubes carries the oil, and the outer parts of the tubes carries the water.

Q. You mean you have tubes within tubes?

A. Yes, a tube within another tube.

Q. So that the salt water is in direct contact with the tube that carries the oil?

* * *

A. It touches the outer part of the tube containing the oil.

Q. During the time that the *Urania* was at the Commercial Ship Repair yard were you in attendance in the engineroom during the entire time?

A. Well, I was all over supervising the work of my assistants on board, and I was also in the shop, in the yard.

Q. Was or was not any work done by the Commercial Ship Repair yard to this lubricating oil cooler?

(Deposition of Mr. Baxevanis.)

A. The radiators or coolers were sent to the Commercial Repair shop for the purpose of being cleaned [531] and tested. They had to see that there were no leaks.”

Mr. Hokanson: I move to strike the latter part as not responsive. [532]

The Court: The objection is overruled and the motion is denied.

“Q. Was this work done on board the ship?

A. In the shop.

Q. Did the Commercial Ship Repair Yard take this cooler off the ship? A. Yes.

Q. When they remove a cooler such as this do they take it in one piece? A. Yes.

Q. Do you aboard the ship have the means by which this cooler can be cleaned?

A. No, we do not; that is why I had to send it out.”

Mr. Hokanson: I move to strike that latter part as not responsive.

The Court: The objection is overruled.

“Q. Did you or anybody else connected with the ship do any work on this cooler?

A. No, nothing.

Q. Now, did the Commercial Ship Repair Yard do any work on the cylinders of the main engine?

(Deposition of Mr. Baxevanis.)

A. Yes, the Commercial Ship Repair Yard changed the inner sleeves of the cylinders.

Q. Will you draw another diagram of one individual cylinder, let's say draw the No. 2 cylinder.

A. They are all the same, so it does not make any difference what cylinder I draw.

(Witness draws diagram.)

Q. Now this outer line represents what?

A. The outer part of the drawing represents the cylinder itself, and the inner part here, the upright part, represents the sleeves. The outer part of the drawing represents the cylinder itself. Then the two inner uprights represent the sleeves, and in the space between these two parts there circulates fresh water for the cooling of the sleeves.

Q. This outer part then is what you call the casing of the cylinder? A. That's right.

Q. And these two vertical shaded areas represent the liner? A. Yes, or inner sleeves.

Q. And between the casing and the liner there circulates fresh water, is that right? A. Yes.

Q. Now the pistons are where?

(Witness draws on diagram and Interpreter writes [534] "Casing" and "Casing" and "Liner" and "Liner".)

A. And these are piston rings (indicating).

(Interpreter writes "Piston Rings".)

Q. Now, how are the pistons lubricated?

(Witness draws on diagram.)

The Interpreter: The witness has made a drawing on the right side of the cylinder in question

(Deposition of Mr. Baxevanis.)

showing that oil comes from a separate lubricator, which oil is then transmitted to the piston.

Mr. Silverthorne: I think we ought to show the top and bottom again in this drawing.

Q. Will you put "Top" up here?

(Witness makes another drawing on diagram and the Interpreter writes "Oiler Ring" and "Top" and "Bottom".)

Q. I take it these lines run through the outer casing and through the compartment which contains salt water and in through the sleeve is a tube of some sort?

A. These are small tubes which have some threading at the end here. They can be closed.

Q. You have an opening then through the sleeve for the tube to go through? A. Yes.

Q. If you have an opening through the sleeve what [535] keeps this water in this area between the sleeve and the outer casing from going through into the piston chamber?

A. There is a gasket, a copper gasket.

Q. Now what work did the shipyard do on the cylinders of the main motor?

A. The shipyard removed the liners which were new, and put them into new cylinders.

Q. Will you explain that answer?

A. I mean by that, that the cylinders were replaced, but not entirely. The cylinders had been broken by the ice and the liners of the old cylinders were removed because they were new, and put into the new cylinders.

(Deposition of Mr. Baxevanis.)

Q. In other words you had new casings?

A. Yes, new casings.

Q. And the old liners which were all right were put back into the new casings, is that correct?

A. That's right.

Q. Is there nothing between the liner and this water chamber?

A. Here at the bottom of the drawing there were some elastic rings or rubber rings for the purpose of keeping the water chamber watertight.

Q. Well, this tube that you have drawn goes through the outer casing?

A. Yes, on the outside there is a rubber gasket which [536] makes it watertight; that is to prevent the water from coming in.

Q. It goes through a hole in the outer casing?

A. Yes.

Q. And then through a hole in the liner?

A. Yes, it is screwed there.

Q. When we talk about a tube, what sort of a tube do you mean? What is it made of?

A. A copper tube. The tube itself is made of copper, but the equipment here is made of steel (indicating).

Q. In other words through your casing, through the water chamber and into the liner and through the liner you have a steel tube?

A. Yes. The tube itself is made of copper, and when it reaches the connection here near the casing the copper ends, and then the other thing is made of steel.

(Deposition of Mr. Baxevanis.)

Q. In other words the tube that goes through into the piston chamber is steel?

A. That's right. It is made of steel, yes.

Q. Is that flexible? A. No.

Q. Now you said the yard removed the liner?

A. Yes.

Q. Did they replace it, too?

A. Yes, they were replaced, but the connection here, the connection was not well made and they had filed it a [537] little bit.

Mr. Silverthorne: I object to the answer as not responsive."

Mr. Hokanson: I renew Mr. Silverthorne's objection on page 98, at the top thereof.

The Court: I think it should be overruled. It is so ordered.

At this point we will take a ten minute recess.

(Recess.)

Mr. Hokanson: May it please the Court, Mr. Howard on Saturday indicated that he would have a witness on Monday to conclude his defense to the libel. I have some witnesses in rebuttal, two of whom are engaged in important work at the Winslow yard, and I have kept them over purposely to put them on. It would be a great convenience if we could put those witnesses on at this time. I feel that we shouldn't be required to keep them here indefinitely waiting upon Mr. Howard's witness.

The Court: How can you excuse those witnesses if they are rebuttal witnesses? You cannot tell what

(Deposition of Mr. Baxevanis.)

Mr. Howard's witnesses are going to testify to, can you?

Mr. Hokanson: The rebuttal which these witnesses [538] will testify to, I believe will have no relationship to the testimony presented by Mr. Howard's witness, although that is just speculation on my part. He has just indicated to me that the witness he has in mind will testify as to the method of keeping accounts and the reasonableness of the charge.

The Court: I say to you that it is extremely important to have witnesses' testimony brought on in its logical order, and local witnesses should conform their convenience to the necessity of the trial.

While I have no desire to interfere with the witnesses, this is a lawsuit in which the libelant is the suing party, and somebody probably will be aggrieved at the decision when it is made and returned—at least, I assume they will be. I never knew a case where there were two litigants and one of them recovered or failed to recover in the decision of the Court that it was not aggrieved at the decision. I think it is bad policy to excuse witnesses if you can avoid it, Mr. Hokanson.

Mr. Hokanson: I don't propose to excuse them, Your Honor. I need their testimony, but Mr. Howard is now proceeding out of order. He is holding up the conclusion of his defense to the libel, and I submit that no good reason has been offered for the delay of [539] that case.

(Deposition of Mr. Baxevanis.)

The Court: The Court allowed it last week to accommodate a witness who Mr. Howard gave the Court the impression got away from him. Now today the witness should be recovered.

Mr. Howard: May it please the Court, we have contacted this witness this morning, and in all fairness to the Court and to opposing counsel, I should state that I am not certain that I will be able to bring that witness on today. I hope to bring him on after lunch.

The Court: Where is the witness?

Mr. Howard: The witness is in Seattle. I conferred with him this morning.

The Court: The Court requires that you be ready to proceed at two o'clock with the witness so far as further proceedings out of order are concerned. I ask Mr. Hokanson to postpone until then the question of whether or not his witnesses should be excused.

Mr. Hokanson: Very well. I am satisfied that the rebuttal testimony which these two witnesses would give would not relate to the matter which Mr. Howard will introduce at two o'clock.

The Court: I prefer not to receive testimony out of order unless it is absolutely necessary. [540]

Mr. Howard: I wish to state to the Court that I have no objection, if it would be agreeable to the Court, to accommodate the witnesses and take that testimony now.

(Deposition of Mr. Baxevanis.)

The Court: I prefer not to do it unless it becomes necessary.

Mr. Howard: We will resume reading the deposition at page 98, the second question.

“Q. Chief, what is the Clayton boiler?

A. That is a boiler for the purpose of heating—that is for the purpose of heat, radiators to supply heat to the cabins, etc.; also for the purpose of heating the holds where the merchandise is stowed.

Q. Is there a pump connected with that boiler?

A. There is a feed pump for the purpose of circulating the water.

Q. Was any work done by the yard on that?

A. The shop took the entire thing from A to Z, did everything on it; but the job was not properly done.

Mr. Silverthorne: I object to the last part of that answer and ask that it be stricken as not responsive.” [541]

Mr. Hokanson: I move to strike the last part of the answer as not responsive.

Mr. Howard: I agree that was not responsive.

The Court: That is stricken.

“Q. Now did the Commercial Ship Repair Yard do any work on the steering gear and on the tele-motor system of the ship?

(Deposition of Mr. Baxevanis.)

A. We had nothing to do with those parts. The Commercial Ship Repair Company obligated themselves to put those things into proper working order.”

Mr. Hokanson: I object to that answer on the ground that it involves a conclusion by the witness.

The Court: That will be stricken.

“Q. The steering gear or steering engine and telemotor system, would that be within your jurisdiction as the engineering officer of the ship?

A. Well, of course those parts are worked from on deck, but in case of damage or anything being out of order it is up to me to see to it that they are properly repaired. [542]

Q. Was any report made to you by the Commercial Ship Repair people of the condition of the steering gear and the telemotor system?

A. They didn't make any report to me, nor did they ask me to sign any paper. As a matter of fact I didn't sign any paper regarding the proper working of anything; they did not deliver anything to me.”

Mr. Hokanson: I move to strike the last sentence as not responsive.

(Deposition of Mr. Baxevanis.)

The Court: It seems not responsive to the Court. It is stricken.

“Q. Do you know whether or not the telemotor oil was removed from the telemotor system at the Commercial Ship Repair Yard?

A. First of all I want to explain this, whenever a shop, a repair shop undertakes to do anything I have nothing to do with it at all. They simply take the parts of the machine or other parts, they take them to the shop and do whatever there has to be done to them. I am not interested in their work at all.

Mr. Silverthorne: I object to that answer [543] as not responsive.”

Mr. Hokanson: I renew Mr. Silverthorne's objection that the answer is not responsive to the question, and I move to strike the entire answer.

The Court: Do you contend that any part of it is responsive?

Mr. Howard: No, Your Honor, I concede that that answer is not responsive.

The Court: It is stricken.

“Q. Do you know, Chief, of your own knowledge whether or not the telemotor oil was removed from the telemotor system?

(Deposition of Mr. Baxevanis.)

A. That I don't know; I don't know what they did. I do know that they had oil but whether or not they removed any oil I don't know.

Q. Now Chief, you left the Commercial Ship Repair Yard on October 16th according to the log, is that correct? A. Yes sir.

Q. I note in the log that you have entered the fuel consumed on each day. Does this figure under "Summary" opposite the word "Summary" mean the fuel the ship actually [544] consumed?

A. Yes, that's right.

Q. Well, the fuel consumption from these figures would appear to be about 16 barrels per day, is that correct?

The Interpreter: On an average?

Mr. Baillie: Yes.

A. Yes, about. Of course that depends on the quality. Well, that was the consumption taking into consideration also the auxiliary motors.

Q. How long did you remain with the Urania?

A. From August 1st until February 1st.

Q. Would you say that that 16 barrels per day would be about average during the entire time you were aboard? A. Yes.

Q. From the 16th of October when you left the Commercial Ship Repair Yard until the 26th of October I note from the log that you were running the engines at about 288 or 290 revolutions per minute, is that correct?

A. Yes, I did that because the engines had just

(Deposition of Mr. Baxevanis.)

come out of the repair shop and I did not want to strain them.”

Mr. Hokanson: Move to strike all but the answer “Yes” as not responsive.

Mr. Howard: I submit that is all part of the question previously asked the witness.

The Court: The Court will not strike that.

“Q. What would the normal R.P.M.s be?

A. 325 R.P.M. Well, the maximum would be 325 R.P.M.; the average would depend on the speed and the economic consumption that would be required. I would say 310 or 315 R.P.M. That depends mostly on the speed.

Q. I refer you to the entry in your log for October 26, 1948. This is in Greek, is it?

A. Yes.

Q. Will you translate that entry for us, please, and read it into the record?

A. (Witness translating from entry): “In view of the fact that the engines were listing on account of the rough weather or the rough seas the number of R.P.M.s go up and down. About 3:20 p.m. I ascertained that the number of R.P.M.s of the engine had decreased, and I was obliged to stop the engine for the purpose of finding out what was the cause of such a decrease in the R.P.M.s Then after stopping the engines I started to dismount the gov-

(Deposition of Mr. Baxevanis.)

ernor right away. After the dismounting of the governor I noticed that the gear, or teeth of the gear were worn out, which was caused by the improper functioning or working of the engine. Then I ascertained the cause of this. Then I put the engines to [546] 150 R.P.M. for the purpose of reaching the nearest port in order to change the gear in question. I started the engine at 11:30 p.m." That is all.

Q. What first caused you to think there was something wrong with the engine, Chief?

A. The number of R.P.M.s, and the noise that it made.

Q. And when you heard the noise what did you first do?

A. The first thing I did was to stop the engine.

Q. And then what did you do?

A. I dismounted the engine for the purpose of finding out the cause of the noise. Well, I changed the oil and also the filter in the engine, but I did not put this in the log here.

Q. And how did you discover that these gears were worn?

A. I dismounted them and I saw it, and then I heard the big noise they were making.

Q. Referring to Respondent's Exhibit K for Identification, will you indicate which gears you are talking about?

A. The gear that is on here (indicating).

Q. Indicating the gears at the base of the vertical shaft, is that correct?

(Deposition of Mr. Baxevanis.)

A. Yes, two gears here.

Q. Did you examine the gears at the top of the vertical shaft?

A. Well, I examined the upper gear and there was [547] nothing the matter with it except the nut here which was a little bit loose and I tightened it. The upper gears were also worn out but not as much as the lower gear. That was not a thing of great importance. The worn out part of the upper gear was not anything of importance. The big noise was being made by the lower gear.

Q. Now, after you discovered this, Chief, you slowed the engines, is that correct?

A. I stopped the engine, then I changed the oil because the oil had some iron filings in it.

Q. Did you report this difficulty to the captain?

A. Yes, I made my report immediately to him.

Q. And what did you advise him to do?

A. I advised the captain to put in to the nearest port.

Q. And did you subsequently put into a port?

A. Yes, then we went to the nearest port which was 65 miles away.

Q. And that was Manzanillo, was it?

A. Yes.

Q. Was any work done on the engines there?

A. Yes.

Q. What work was done?

A. The gears were changed.

Q. By whom?

(Deposition of Mr. Baxevanis.)

A. By the mechanic expert of the Union Diesel Company. [548]

Q. Did you help him in the work?

A. Yes, I simply helped him under his own directions.

Q. And do you know what he did?

A. For example he changed the worn out gears; he regulated the engine and also the governor.

Q. Did he increase the lubrication of the gears?

A. He put some tubes or pipes in to increase the lubrication, yes.

Q. And after this was done the ship then sailed again, and where did you go?

A. Well, we sailed for Long Beach.

Q. And was any further work done on the engine there?

A. Yes, the engine was dismantled; the entire pump of the boiler was changed; that is, a new pump was put on board.

Q. I should have asked you, prior to your arrival at Long Beach did you have any further difficulty with the engine?

A. Yes, we did have some more difficulties, and the log will speak for itself. The gears became worn out again.

Q. Were you able to proceed all the way to Long Beach under your own power?

A. No. When we were two days out of Manzanillo the gears were worn out again, and we stopped the engine; then a tug came along and towed us into port. [549]

(Deposition of Mr. Baxevanis.)

Q. When you discovered the gears were worn out again did you report that to the captain?

A. Yes, I advised the master immediately, and I stopped the engine.

Q. Was the Union Diesel man on board at that time? A. Yes.

Q. What did you say to the captain?

A. I told the captain, or the master that the gears had become worn again because they were making the same noise.

Q. Was it possible to operate the engine?

A. I did not want to go on with the engines because the oil was full of iron filings which I noticed, and I did not want to ruin the entire engine by going on.

Q. What do you think would have happened if you had operated it with the iron filings in the lubricating oil?"

Mr. Hokanson: I object to that question on the ground that it is speculative, and involves the opinion of the witness, and it is not relevant here.

The Court: Overruled.

"A. I would have ruined the engine. That is, the [550] filings, the iron filings would have ruined the filter and so forth; and of course when there was no lubrication the parts would become more worn out. There was oil but it was dirty and full of iron filings.

(Deposition of Mr. Baxevanis.)

Q. Had you changed the oil at Manzanillo?

A. Yes. After leaving Manzanillo, for the sake of precaution I kept the engine at 150 R.P.M., keeping the reserve power in case of any emergency, in case of a sudden storm or some other thing. Then I would be able to increase the power of the engine.

Mr. Silverthorne: I object to the answer as not being responsive."

Mr. Hokanson: I renew Mr. Silverthorne's objection. The question is, "Had you changed the oil at Manzanillo?" and the answer goes into some matters which are not embraced by that question.

The Court: The answer is "Yes," and the rest of the answer from there on will be stricken.

"Q. At what time are you talking about now?

A. After I left Manzanillo.

Q. I understood you to say that the Union Diesel man [551] had replaced the gears at Manzanillo?

A. Yes. He put in new gears, yes.

Q. And at Manzanillo you changed the oil, too, is that right? A. Yes. Also the filter.

Q. Well, then your log shows that for the first full day of sailing after leaving Manzanillo to go to Long Beach you operated her at 300 R.P.M. I am trying to understand what you meant when you said you did not operate her at more than 150 R.P.M.

(Deposition of Mr. Baxevanis.)

A. (Consulting logbook): After leaving Manzanillo, yes; after the gears were changed, yes, we were navigating even at 325 R.P.M. in order to make a resistance test.

Q. Then it was after you discovered that the gears had become worn again that you reduced it to 140 R.P.M., is that correct? A. Yes.

Q. And finally you decided that you couldn't operate it at all, is that right? A. Yes.

Q. Did you consult with the Union Diesel man at that point? A. Yes.

Q. And did he concur in your decision that you could not operate the engines?

A. Yes, he even advised his own company.

Q. Now, during the time you were at Long Beach were [552] you aboard the ship while the repairs were being made? A. Yes.

Q. Do you know of your own knowledge what was discovered to have been the cause of the wearing of these gears?"

Mr. Hokanson: I object to the question on the ground that it involves an assumption of fact that a cause was established.

Mr. Howard: If the Court please, the witness is asked whether of his own knowledge he knows what was discovered to have been the cause of the wearing of the gears. It seems to me that is a very appropriate question after he has established he was pres-

(Deposition of Mr. Baxevanis.)

ent during the course of the repairs at Long Beach. I don't see that there is any assumption of fact involved there that would make the question objectionable.

The Court: The objection is overruled. I have read forward and the last question and answer at the bottom of the page, if they are objected to, I am not so sure about those.

“A. It was discovered that the cause of the wearing out of these gears had been the infiltration of [553] seawater which had destroyed the viscosity of the oil.

Q. And do you know of your own knowledge how that seawater got into the oil?

A. It came from the oil cooler which had a leak.

Q. Was there one or more leaks?

A. I did not see it but I was told that the cooler had about 15 leaks or holes. The people of the Union Diesel took the radiator or cooler to the shop and they told him what they had found, so I am relying on what they told me. This was caused by the fact that the radiator cooler had not been cleaned the first time because the cause of it probably must have been the rust.

Mr. Silverthorne: I object to the last part of that answer as not being responsive.”

Mr. Hokanson: I object and move that the whole

(Deposition of Mr. Baxevanis.)

answer be stricken on the ground that it is entirely hearsay, and I move further that the answer to the previous question be stricken on the ground that the witness has subsequently established by his answer that he did not know of his own knowledge what the condition of the oil cooler was.

The Court: The last question on page 108?

Mr. Hokanson: I submit that the answer beginning [554] "It was discovered"—

The Court: "Do you know of your own knowledge how that seawater got into the oil?" Do you object to that because it developed that he did not know of his own knowledge by reason of what he said?

Mr. Hokanson: That is right.

Mr. Howard: If the Court please, I concede that the last answer, the answer on the last two lines of page 108 and extending on to page 109, is objectionable, but the previous answers, I believe, the witness has testified to things within his own knowledge.

The Court: He has been asked whether he knew this of his own knowledge, and he said yes, but the latter question and answer shows that is not correct.

Mr. Howard: That is only as to the leaks in the lubricating oil cooler, which he said he did not see and it was reported to him, but he is qualified to testify as to what he found as to the galling of the gears, which is related by some testimony as to the leaks.

Mr. Hokanson: It is quite apparent from the

(Deposition of Mr. Baxevanis.)

witness' testimony that when he answers the first question about his knowledge of what was discovered to have been the cause, he says "It was discovered," and that necessarily is a hearsay statement. He has not [555] established by his own testimony that he independently ascertained the cause. His answers to the subsequent questions show that he is basing them on what somebody else said. I submit therefore that his answers be stricken.

The Court: Is there the deposition of anyone who established a cause of his own knowledge?

Mr. Howard: Yes. We will offer further testimony on the leaks in the lubricating oil.

The Court: This objection is sustained. Beginning with the question "Do you know of your own knowledge what was discovered", that question, slightly below the middle of page 108, and the remainder of that page and down to the end of the answer ending "because the cause of it probably must have been the rust," at the top of page 109 will be stricken.

"Q. In your experience, Chief, is it possible, assuming well cleaned and sound tubing through which the oil circulates in the cooler, that holes could develop in that tubing from let's say the 16th of October on through to the 26th of October?

A. Well, I want to say that if the rust had not been cleaned out, that rust would cause holes or leaks in the [556] tubes.

(Deposition of Mr. Baxevanis.)

Mr. Silverthorne: I object to that as not responsive."

Mr. Hokanson: I object to that as not responsive.

Mr. Howard: I submit that is responsive to the question.

The Court: That is sustained. I think it is more directly answered down below.

"A. The answer is no, if the tube had been in good condition.

Q. Now Chief, was anything discovered to have been wrong with the No. 2 cylinder?

A. I did not find any difficulty in the cylinder."

Mr. Howard: I concede the rest of the answer is not responsive, after the first sentence, and I am willing to have it stricken, starting after the first line on page 110.

The Court: It will be stricken. The remainder of the answer there in question will be stricken, from the [557] first line on page 110.

"Q. In cylinder No. 6? A. Yes.

Q. Well, then, with respect to cylinder No. 6 did you find anything wrong with it?

A. Yes, No. 6.

(Deposition of Mr. Baxevanis.)

Q. And what was the defect?

A. The defect was that in the oil tube connection here the gasket or equipment here was not watertight, as some water was leaking out of it. I simply tightened it, that's all.

Cross-Examination

By Mr. Silverthorne:

Q. Chief, was the *Urania* the first time you had been employed in the capacity of chief engineer on a diesel powered ship?

A. No, I had worked before on the *Princess Elizabeth*.

Q. I don't believe it was established, Chief, where you were born?

A. I was born in Rumania.

Q. Are you a Rumanian citizen now? [558]

A. No. I am a Greek citizen.

Q. Do you read English?

A. Very little.

Q. Chief, you testified before that the ship's crew, including yourself, never did any work on this cooler which [559] you have drawn in Respondent's Exhibit L for Identification?

A. Yes, that is correct. That is we did not do any repair work on it.

Q. Then you never cleaned the pipes leading into this cooler at all?

A. Yes, we did clean and wash them on board.

(Deposition of Mr. Baxevanis.)

Well, that oil tube here in the diagram has nothing to do with the cooler itself. Please don't confuse the radiator with this oil pipe here.

Q. I understand. My question is did you clean the water pipes leading into the cooler?

A. No. The unit and the cooler itself was taken care of by the shop.

Q. I understand. My question is, did you clean the water pipes leading into the cooler? That is the pipes from outside leading into the cooler?

A. Yes, the outside pipes.

Q. The crew cleaned those?

A. My personnel did that.

Q. And when did they clean those?

A. When we were in Seattle.

Q. When you were in the repair yard at Seattle, that is the Winslow yard at Seattle?

A. Yes.

Q. When you were talking about the cylinders earlier [560] you mentioned that the Commercial Ship Repair Yard installed the liners in the cylinders. That is all they did in regard to the cylinders, is that correct? A. Yes.

Q. When you described the breakdown of the telemotor you said that it didn't work correctly. Could you tell us why it didn't work correctly and what was the cause of the breakdown?

A. It was some electrical part of it which did not work, and the electrician repaired it.

Q. Who was this electrician that repaired it?

A. Of the shipyard.

(Deposition of Mr. Baxevanis.)

Q. Of the Commercial Ship Repair Company?

A. Yes.

Q. This was after the breakdown at sea?

A. The first breakdown, yes.

Q. Where did the Commercial shipyard electrician repair this telemotor? Was it at Port Angeles?

A. Port Angeles.

Q. Now when you referred to the log for October 26, 1948, the first entry that you read said that the ship was listing because of rough weather, and that the R.P.M. of the engine varied because of this listing, is that right?

A. Well, it was a small list and the number of R.P.M. varied. [561]

Q. But you were encountering rough weather at that time, is that correct?

A. Well, it was average weather.

Q. Then the entry in your logbook is incorrect, is that right?

A. Agitated sea—well, it is not a high sea, you know.

Mr. Baillie: Swells?

A. More than swells. Agitated sea we call it, not heavy seas; between a swell and a heavy sea.

Q. Now, Chief, I believe you said that the first warning you had of the breakdown of this engine was the indication of the R.P.M. and the noise it was making, is that correct? A. Yes.

Q. Did you have a maintenance manual put out by the Union Diesel Company for use on this engine? A. Yes.

(Deposition of Mr. Baxevanis.)

Q. Was it printed in English? A. Yes.

Q. Was the Urania fitted with the usual standard gauges and thermometers?

A. Yes, and I had those precision instruments checked up in the Winslow yard and also in Long Beach.

Q. Did the engineer on watch check those instruments daily?

A. Yes, and it is also reported in the engine-room log. [562]

Q. And these instruments did not indicate anything wrong with the engine prior to October 26, 1948?

A. No, they did not indicate anything wrong.

Q. Did you have a copy of the Coastal Pilot, that is a book, aboard?

A. It is not within my province; I didn't have it.

Q. Did you make any check to determine if repair facilities existed at Manzanillo before you advised the captain to put into Manzanillo?

A. I did not do that, but the master made inquiry by radio.

Q. After the telemotor was repaired did it function all right?

A. Yes, but a few hours after it broke down again.

Q. What was the name of the Union Diesel man who came aboard at Manzanillo and made the trip from Manzanillo to Long Beach with you?

A. His name is an easy one but I don't remem-

(Deposition of Mr. Baxevanis.)

ber the name just now. Give me a chance to find a memorandum.

Mr. Baille: Was it Cross?

The Witness: Yes, Cross, it was Mr. Cross.

Q. Do you remember the date that you arrived at Long Beach?

A. I believe we arrived on November 11th, but I want to make sure. (Consulting logbook) November 12th. [563]

Q. Did the ship proceed first from Manzanillo to San Pedro and then to Long Beach?

A. Well, really I don't know myself. I believe that San Pedro and Long Beach are the same thing to me in my own mind.

Q. Before the ship entered the Craig Shipbuilding Yard in Long Beach did she dock or anchor at San Pedro?

A. We anchored at a certain point; when we got clearance papers we moved forward and went to the shipyard.

Q. How long did you anchor at this certain point? A. A few hours.

Q. Was the *Urania* equipped with an electric alarm system that would ring when the temperature of the water or oil reached a certain point?

A. Yes, of course.

Q. And this alarm never sounded prior to the breakdown on October 26, 1948, is that correct?

A. No.

Q. Chief, you have testified that at Manzanillo and at Long Beach where the repairs were made

(Deposition of Mr. Baxevanis.)

on the *Urania*, they were actually done by the Union Diesel people, is that correct?

A. Yes sir.

Q. Then you yourself don't actually know what the cause of the breakdown was since all you know is what they [564] told you, is that right?

A. I personally did not verify the cause of the breakdown myself; they informed me.

Q. Chief, could you describe briefly to us what daily maintenance procedure you had performed in the engineroom in connection with the cooling and lubricating system of the engine from October 16 when you sailed until you arrived at Long Beach?

A. I checked the temperature of the cooler.

Q. Yourself?

A. Either I or the engineer on watch. I have no watch myself. My men would supervise the temperatures and the pressures. They would put fuel oil into the tanks, and they supervised in a general way the proper working of the engine, and if anything was wrong they would report it to me, and if there was something that didn't work right, that is either the water or the oil, then that would constitute an alarm.

Q. And you have said that there was no alarm prior to October 26, 1948, is that correct?

A. No, the instruments did not give any alarm. They had been checked up and repaired by the shipyard.

Mr. Howard: I submit that is a proper question. [567]

The Court: "No." will stand, and the remainder of the answer will be stricken.

Mr. Hokanson: I believe I didn't finish the answer. "A. (cont'g) Then many other defects were shown later on. For example, I examined the tubes of the boiler later on and I found that they were broken and out of order." Does your ruling go to that?

The Court: Yes.

Mr. Howard: I will concede that the remainder is not responsive.

The Court: That will be stricken.

Mr. Howard: That concludes the deposition.

The Court: Each of these depositions is received as a part of respondent's and cross libelant's case in chief.

Mr. Howard: I offer A-14, consisting of five diagrams, at this time.

The Court: Is there any objection?

Mr. Hokanson: I have no objection, your Honor.

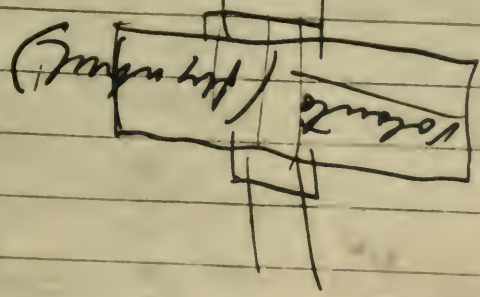
The Court: A-14 is admitted as to each and all its parts.

(Respondent's Exhibit A-14(1), A-14(2), A-14(3), A-14(4) and A-14(5) received in evidence.)

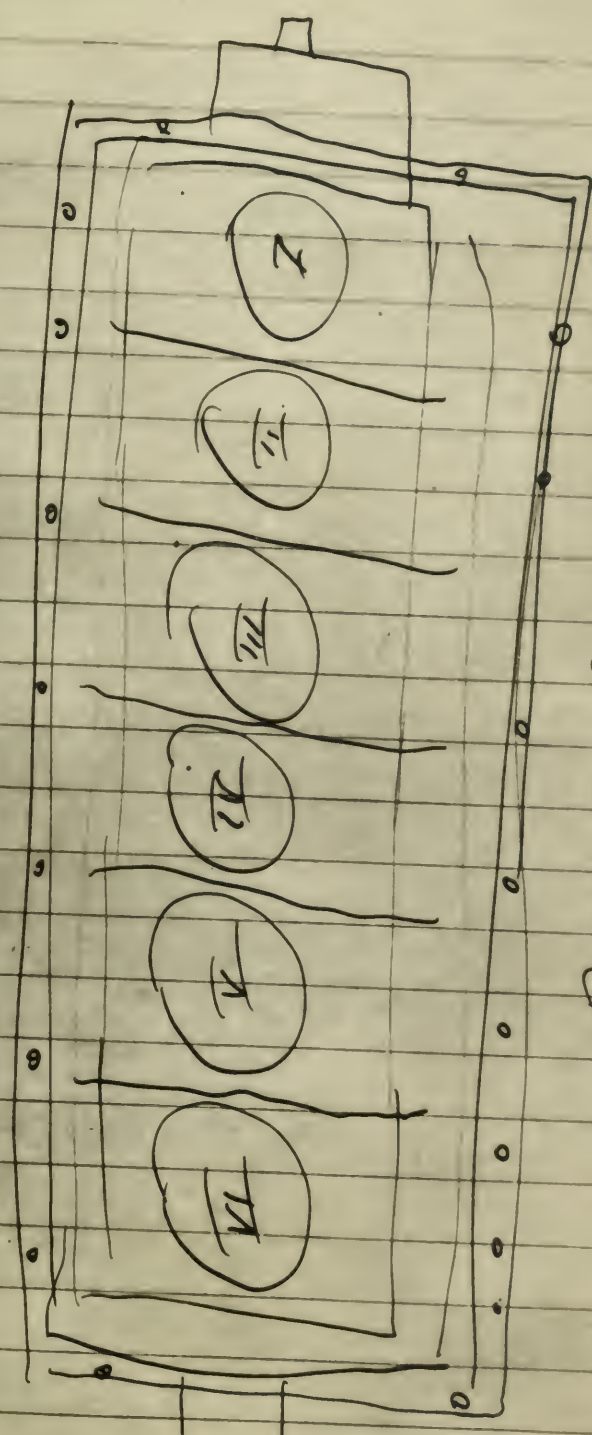
Para
(Fire.)

12322

CAUSE 15226
RESPONDENT EXHIBIT 2-14(1)
ADMITTED 10-11-19



(10/11/19)

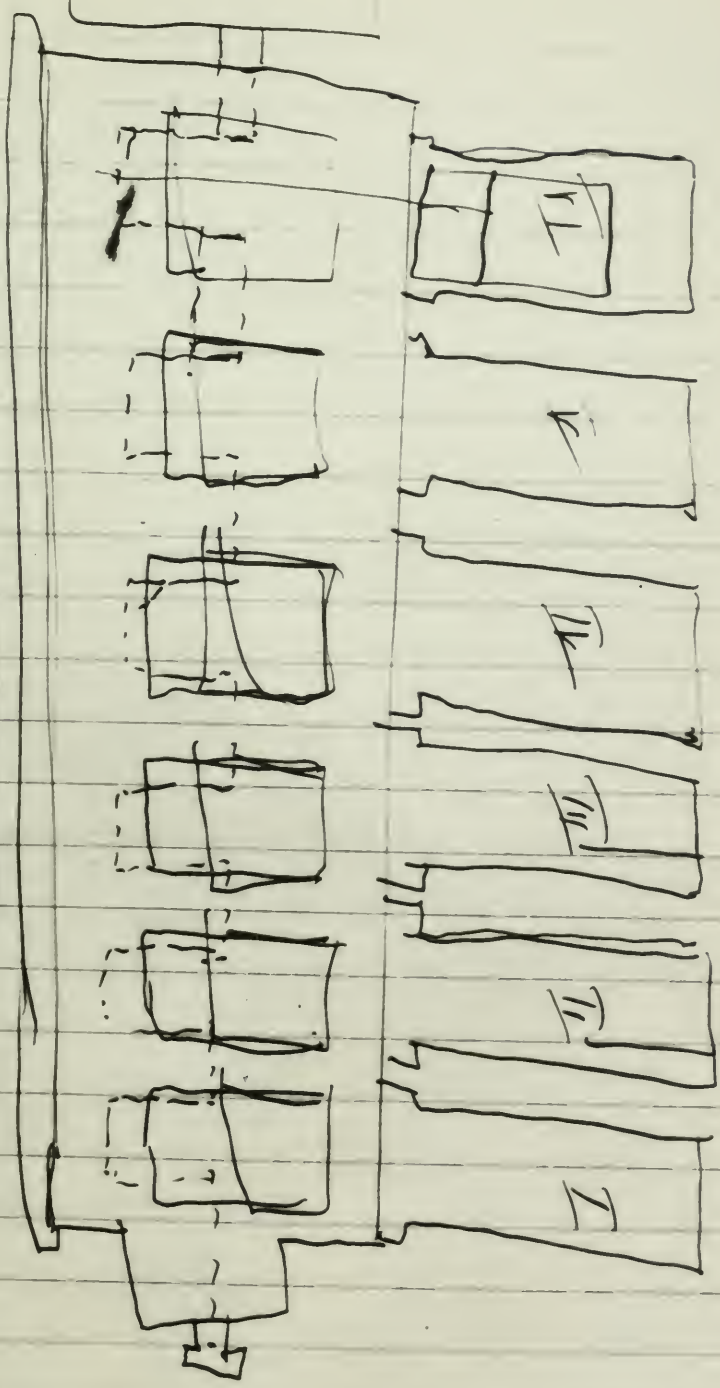


Recd. Fr. J. L. H. A.
2/24/49
F.C. 7

CAUSE 15266
 RESPONDENT EXHIBIT A-24(26)
 ADMITTED APR 11 1949

(pro)

(att)



Resp. Ex. J. Jan 27
 2/24/49
 J. C.

CAUSE 15-266

RESPONDENT EXHIBIT

ADMITTED APR 11 1964
EXHIBIT 6-14(3)

APR 11 1949

Superior
Superior

Regulatory (government)

ingravaggio (gear)

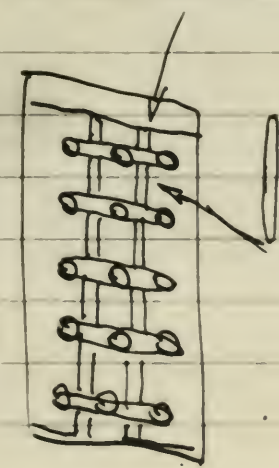
Des. 2

750

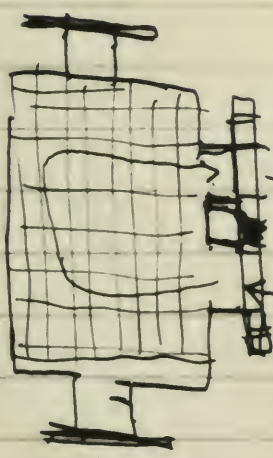
CAUSE 12266
RESPONDENT EXHIBIT A-14-(4)
ADMITTED APR 11 1948

Radiatore d'olio oil cooler

super (top part)



← olio lub.
(oil pipe)



← olio lub.
(oil pipe)

acqua di mare
(sea water)

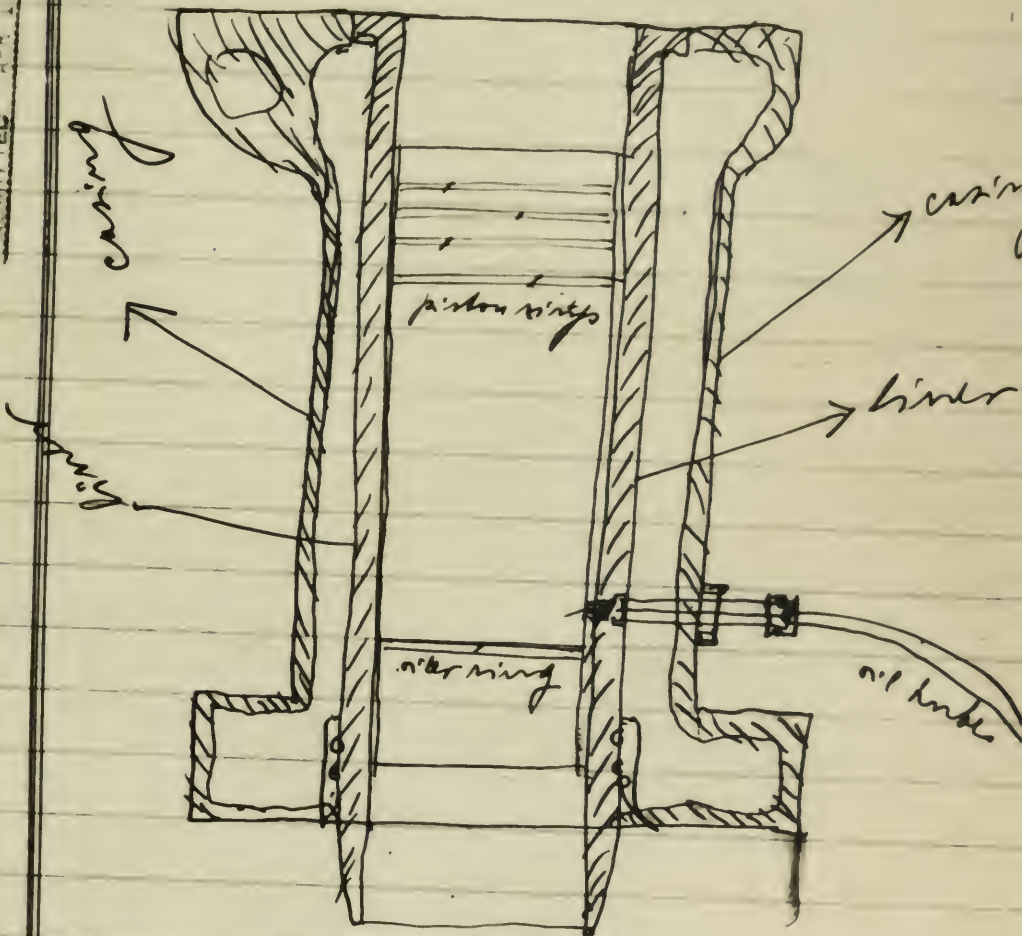
acqua di mare
(sea water)

sotto
(lower part)

Resp Ex L for Dr.
2/24/48
E.P.

CAUSE 15266
RESPONDENT EXHIBIT 2-14(5)
SUBMITTED APR 11 1949

Top



Resp. Ex M for Id
2/24/49
EOT

Mr. Howard: A-8, the logbook, has been admitted.

The Court: That is correct. A-9, A-10 and A-11 [568] have had no ruling.

Mr. Howard: We will offer further testimony on those. A-12 and A-13, the engine logs, have been admitted, according to my records.

The Court: A-12 and A-13 have been admitted, but not A-9, A-10 and A-11.

Mr. Howard: I would now like to read the deposition of James D. Clarke.

DEPOSITION OF
JAMES D. CLARKE

“Q. (By Mr. Howard): Will you state your full name, please? A. James D. Clarke.

Q. What is your address?

A. 1215 Grove Street, San Francisco.

Q. What is your occupation, Mr. Clarke?

A. Ship Superintendent, Marine.

Q. And by whom are you employed?

A. Commercial Ship Repair, Inc.

Q. Whereabouts?

A. San Francisco, California.

Q. How long have you been employed by that company?

A. Since November, 1947. I believe that is correct.

Q. Would it have been November, '48?

A. 1948, last year.

Q. Where were you employed previous to that

(Deposition of James D. Clarke.)

time? A. Independent surveyor. [569]

Q. In what locality? A. Seattle.

Q. For how long?

A. A period from 1946 to November, 1948.

Q. And will you state briefly your experience in connection with water transportation ship repairs prior to that date?

A. Yes, before the war I was employed as an engineer for approximately ten years.

Q. Holding what license? A. Chief.

Q. Diesel or steam?

A. Diesel and steam, and two and a half years with Joshua Hendey Iron Works, as Superintendent on the assembly floor and outside erection; the period from 1943 until the end of the war with Poole McGonigle & Jennings Corporation, Portland, Oregon, as Port Engineer at Seattle until June, 1946.

Q. Then, as I recall, you stated you were an independent surveyor from June, '46 to November, '48? A. That is right.

Q. Mr. Clarke, in October, 1948, were you called upon to perform some services in connection with the tanker Urania? A. Yes, I was.

Q. At whose request?

A. General Steamship Corporation.

Q. And what did you do at that time?

A. Made a general survey, or a superficial survey, rather, of the boiler, the Clayton boiler, on the Urania. [570]

(Deposition of James D. Clarke.)

Q. Where was the vessel located at that time?

A. It was located at the Winslow Yard.

Q. And do you recall about what date that was?

A. No, not offhand, because I don't have my records with me.

Mr. Howard: At this time, I would like to ask, Counsel, for enlightenment, if he will produce for us photostatic copies of the reports rendered by Mr. Clarke to the General Steamship Corporation, Ltd. or to the owners of the tanker Urania which he obtained on motion for production of documents directed against the Respondent and Cross-claimant since inadvertently our carbon copies of such documents which were produced on motion for production have been left in Seattle and are not available at this time. Mr. Hokanson, do you have those documents with you?

Mr. Hokanson: I do.

Mr. Howard: Would you mind producing them?

Mr. Hokanson: I have no objection. This is off the record.

Mr. Howard: Can we stipulate that we will have the witness identify these and substitute the copies we have?

Mr. Hokanson: So stipulated, the photostatic copies may be substituted.

Q. (By Mr. Howard): Mr. Clarke, handing you what has been marked for identification as Claimant's Exhibit [571] SF-1"—

Mr. Howard: That is Identification A-6.

(Deposition of James D. Clarke.)

——“I will ask you to read that and tell us if you can what that is.

A. Yes, that is correct.

Q. What is that, sir?

A. That is my report to General Steamship Corporation, and signed by me.

Q. And that is the report that you previously stated was made while the Urania was at Winslow?

A. That is right.”

Mr. Howard: I now offer Exhibit A-6. That is the Winslow survey.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-6 received in evidence.)

RESPONDENT'S EXHIBIT A-6

James D. Clarke

Marine Surveyor

2606 50th S.W.
Seattle, Wash.

Tel. AValon 4495
October 16, 1948

M/T Urania

The undersigned surveyor did at the request of the General Steamship Corp. Ltd., of Seattle, Wash. attend the single screw motor tanker Urania as she lay afloat and moored at the Commercial Ship Repair Yard at Winslow, Washington on October 15, 1948 to determine the condition of the boiler and report on same.

Attending

(Deposition of James D. Clarke.)

James D. Clarke for Owners.

James Featherstone for Commercial Ship
Repair.

Found—Clayton heating boiler in operation, construction of boiler found to be satisfactory, operation of feed pumps found to be unsatisfactory and in leaking condition.

Recommended—Feed pumps be repacked with Neoprene Rubber diaphragm pump plungers. Remove emulsified oil from crank case and replace with new oil. This work accomplished.

Bulkhead in way of ammunition room not removed as per specifications.

That cost of item be deleted from original billing.

/s/ JAMES D. CLARKE,
Marine Surveyor.

JDC:ac

Admitted April 11, 1949.

“Q. Now, independently of this exhibit, Mr. Clarke, will you please state what part of the engine or auxiliaries you examined on that occasion?

A. Only in connection with the Clayton boiler.

Q. And state briefly what the Clayton boiler is.

A. It is merely a heating boiler for heating water in the quarters aboard the ship. [572]

Q. Is that boiler used to heat the coils in the cargo tanks? A. I didn't check on that.

Q. What if anything did you find as to the

(Deposition of James D. Clarke.)

condition of that Clayton boiler?

A. The condition I found as I stated in my report was merely that the plungers were leaking and the packing leaking, and I recommended new Neoprene packing to be installed and that was done before I left the vessel.

Q. Who else was with you aboard the vessel on that occasion?

A. Mr. Featherstone and Mr. Gilmore were there.

Q. And who is the Mr. Gilmore you refer to?

A. Mr. Jack Gilmore, a surveyor in Seattle, Washington.

Q. And was the pump on the Clayton boiler disassembled at the time of your inspection?

A. Definitely not.

Q. What parts if any of the pump were removed?

A. The parts necessary to install the pump packing and plunger packing.

Q. Who accomplished the repairs?

A. The shipyard, I should imagine.

Q. Did you examine the Clayton boiler after repairs had been completed?

A. Only to the fact that there was no further leak found after it was repaired.

Q. Was the pump on the boiler being operated at the time of your examination?

A. Right, yes. [573]

Q. And for how long a period did you observe its operation?

(Deposition of James D. Clarke.)

A. Not very long, just to satisfy myself it was in good operating condition, no leaks observed.

Q. Could you give us any idea in minutes or hours how long it was?

A. Oh, about 15 minutes.

Q. I note that you make a recommendation that emulsified oil from the crankcase be removed and replaced with new oil. Can you state whether that was done?

A. Yes, that was done; definitely done, due to the fact that the packing having leaked, the oil got down into the base of the pump and emulsified. That was definitely removed.

Q. And you had noted the emulsified oil in the crankcase before on your first inspection?

A. That is right.

Q. I note another item in this report, Mr. Clarke, as to the bulkhead in the way of the ammunition room.

A. Right.

Q. Did you check that to determine whether that had been removed?

A. Yes, I did. I looked at it.

Q. What did you find?

A. It had not been removed.

Q. And did you make a recommendation as to that item?

A. I recommended that the cost of that item be deleted from the original specification; that was a recommendation of General Steamship Corporation.

Q. And to whom was this report submitted?

(Deposition of James D. Clarke.)

A. Mr. Lund at General Steamship Corporation.

Q. What was your understanding as to who you were representing at the time you made it?

A. Definitely representing General Steamship Corporation.

Q. And were you aware of the relationship, if any, then existing between General Steamship Corporation and the owners of the tanker?

A. Not from exactly knowledge, no. From hearsay I understood that she was owned by certain interests, foreign interests. That is all I knew about it, and furthermore that General Steamship Company had to have the approval to hire a surveyor before I went to work.

Q. Did you submit your statement for services rendered on this survey? A. Yes.

Q. Will you state whether or not you have been compensated for those services?

A. Oh, yes, I have been compensated.

Q. Will you state whether the amount you have charged for the survey accomplished as represented by this exhibit represented the standard customary charge for similar work? A. Yes.

Q. Thereafter, Mr. Clarke, did you perform any further services in connection with the tanker *Urania*? A. Yes.

Q. And where was the vessel located at that time? A. At Port Angelus. [575]

Q. Can you state about when you performed such services?

(Deposition of James D. Clarke.)

A. Not offhand, until I refer to my records.

Q. I hand you what has been marked for identification, Claimant's Exhibit SF-2, can you identify that? You have not signed any of these documents recently, have you?"

Mr. Howard: I believe that should be "You have not seen any of these documents" rather than "signed."

Mr. Hokanson: That is agreeable with me, that that word be substituted.

The Court: It may be so substituted.

"A. No. This evidently is a copy of the carbon copy, photostatic copy of the carbon copy, as it does not bear my signature. However, that is correct.

Q. Is that the report that you submitted?

A. That is right.

Q. And that is a report of your services while the Urania was at Port Angelus?

A. Yes.

Q. And referring you to the date that instrument bears, does that appear to be the date on which you made an inspection?

A. Yes, that appears as the date. [576]

Q. That is October 18? A. Yes, 1948.

Q. By whom were you requested to make that survey? A. General Steamship Corporation."

(Deposition of James D. Clarke.)

Mr. Howard: I offer Cross Libelant's A-7.

Mr. Hokanson: May it please the Court, I may desire to object to the introduction of that document based upon subsequent testimony of the witness, and obviously he not being here, I have no opportunity to examine him at this time, and the deposition does not show that the offer was made at this point, so that if I may reserve my objection until the conclusion of the deposition on the offer——

Mr. Howard: The witness has identified the document as being his report to General Steamship Corporation.

The Court: Is there any objection that a marine surveyor's report on a survey is not admissible in any case?

Mr. Hokanson: Not on that, Your Honor. I have reference to the contents of the document and as to the witness' testimony with respect to certain conclusions drawn in his survey report, whether that goes to admissibility or weight.

The Court: The objection is overruled. Respondent's [577] Exhibit A-7 is now admitted.

(Respondent's Exhibit A-7 received in evidence.)

(Deposition of James D. Clarke.)

RESPONDENTS' EXHIBIT A-7

James D. Clarke
Marine Surveyor

2606 50th S. W.
Seattle, Washington

Telephone:
AValon 4495

M/T Urania

Oct. 18, 1948

The undersigned Surveyor did, at the request of the General Steanship Corp. Ltd., of Seattle, Washington, acting as Agents for the Owners of the single screw Motor Tanker Urania, attend the vessel as she lay afloat and anchored on October 16, 1948 in Port Angeles Bay to determine the cause of delay to the vessel, accomplish repairs, and report on same.

Attending: James D. Clarke, representing Owners.

J. H. Woodside, Machinist from Commercial Ship Repair Co.

Lester Short, Electrician from Commercial Ship Repair Co.

On October 16, 1948, the undersigned was contacted by the General Steamship Corp., Ltd., and ordered to proceed to Port Angeles to determine the cause of the trouble reported to have developed in vessels steering gear mechanism. The undersigned contacted the Commercial Ship Repair Co. and requested the services of an Electrician and Machinist to accompany the undersigned to Port Angeles via West Coast Airlines.

(Deposition of James D. Clarke.)

Upon arrival at Port Angeles a launch was hired to transport the workman to the vessel, where upon arrival on board it was found that the steering gear mechanism was oscillating from side to side as much as 60 degrees, the entire system was examined and a broken wire was found in the motor control wiring, from the appearance of this wire it was evident that the break was not complete but would make and break thus causing the controlling motor to hunt, this trouble was corrected and the steering system was thoroughly tested to the satisfaction of the Master and the Chief Engineer.

Log of vessel showed that the steering gear started giving trouble about 3.15 AM Oct 16, 1948, vessel placed on hand emergency steering and headed for anchorage at Port Angeles arriving there about 4.30 AM Oct 16, 1948.

Workman on duty from 11.30 AM to 9.30 PM, Oct 16, 1948

Repairs completed and tested satisfactorily at 7.30 PM Oct 16, 1948

Pilot on board 7.45 PM 10-16-48

Vessel sailed from anchorage at Port Angeles at 8.00 PM 10-16-48

In my opinion the repairs accomplished where of a permanent nature and all of the system working in a satisfactory manner.

JAMES D. CLARKE,

Marine Surveyor.

Admitted April 11, 1949.

(Deposition of James D. Clarke.)

“Q. And what particular parts of the vessel did you survey on that occasion?

A. Only the part involving the trouble I found as stated in the report.

Q. That was what part, please?

A. The steering engine and the helm.

Q. I note the report is dated October 18, but in the body of the report it reads, ‘on October 16 the undersigned was contacted by General Steamship Corporation and ordered to proceed to Port Angeles.’

A. That is my date of submitting the report.

Q. You actually conducted the survey on October 16? A. That is right.

Q. Who was with you at that time?

A. I had two men from Commercial Ship Repair Yard who furnished them at my request.

Q. What men did you request from Commercial Ship Repair?

A. One electrician and one machinist.

Q. What did you find as to the condition of the telemotor or steering system when you arrived aboard the vessel at Port Angeles?

A. My opinion on that was the fact that somebody had tried to correct the trouble and had [578] failed, which is only natural with the engineer trying to find out their trouble, that is understood.

Q. Could you state what you found?

A. My findings were only as appear in my report.

(Deposition of James D. Clarke.)

Q. Did you receive any report as to the nature of the difficulty before you arrived aboard the vessel?

A. No. My orders from General Steamship Company were to proceed to Port Angeles and correct the trouble found with the steering gear.

Q. And what did you find in the steering gear?

A. I found, when I went aboard, that the steering gear was hunting from side to side.

Q. To what extent?

A. Sixty degrees port and starboard.

Q. Did you locate the source of the difficulty?

A. Yes, definitely.

Q. What was that?

A. I personally did not locate the trouble, but my men working for me, they found a broken wire, floating break, and they checked the air, bled the air out of the system.

Q. I note that in the report it states that from the appearance of this wire it was evident that the break was not complete but would make and break, thus causing the controlling motor to hunt, is that correct?

A. That is right. [579]

Q. You mentioned about bleeding the air out of the system. Is that system controlled by air?

A. No, air getting into the systems will cause it to bounce, in other words.

Q. Did you find air bubbles in the system?

A. No, I did not.

Q. You bled the system?

(Deposition of James D. Clarke.)

A. I bled the system for air, found none.

Q. How long were you engaged in that work aboard the tanker *Urania*?

A. My report states here, I would have to refer to that. I went on duty at 11:30 a.m. As I recall, it took us an hour to fly down there.

Q. You flew from where?

A. From Seattle.

Q. And when did you leave the vessel?

A. We left there at 9:30 p.m.

Q. Of the same day? A. Yes.

Q. And before leaving the vessel had you tested the steering system?

A. Definitely to the satisfaction of the Master and the Chief Engineer.

Q. Will you state what you found to be the condition of the steering system at that time?

A. At that time, after completing the repairs, I found it to be entirely satisfactory.

Q. What did that test consist of?

A. That test consisted of hand steering and putting it over on the electric steering, operating it from side to side to see it work from the pilot house and the steering wheel. [580]

Q. Was the vessel at anchor or under way?

A. It was at anchor.

Q. Was the steering system tested while the vessel was under way?

A. No, only when we were aboard.

(Deposition of James D. Clarke.)

Q. Did you render a statement for your services rendered?

A. I combined the statement of the two jobs in one.

Q. And then I assume that the charges that you made for this work were reasonable or the standard charge for that type of work?

A. That is right, as I understand it, the General Steamship Corporation received permission to pay the bill.

Q. And you have been paid for this?

A. I have been paid.

Q. The men that went with you to Port Angeles actually performed the repairs, made the repairs?

A. That is right.

Q. And they were from Commercial Ship Repair?

A. That is right.

Q. Do you know whether the charges were made for the services of those men?

A. Oh, definitely. I should imagine they would be. Of course, that doesn't come under my jurisdiction."

Mr. Howard: The charges that are referred to there are now covered by Cross Libellant's Exhibit A-5, that [581] has been admitted in evidence.

The Court: The charges are covered by A-5?

Mr. Howard: Yes, Your Honor.

(Deposition of James D. Clarke.)

“Cross-Examination

By Mr. Hokanson:

Q. Mr. Clarke, you are now employed by Commercial Ship Repair, Inc., in San Francisco, California?
A. Right.”

The Court: Do counsel on both sides agree that concern is the same concern as the libelants’ assumed trade name here, and is identical with the same persons as those who are now libelants?

Mr. Hokanson: Your Honor, we will announce for the Court’s information that Commercial Ship Repair, Inc., is a California corporation, doing business in San Francisco, California, and is owned by the co-partners E. A. Black and J. J. Featherstone, doing business as Commercial Ship Repair, the libelants in this action.

Mr. Howard: I so stipulate, Your Honor.

“Q. How did you enter into that employment?

A. I entered into this employment by coming to San Francisco looking for a job, found out that Commercial Ship Repair was starting a yard here, and made application for the position and got it.

Q. Your employment, so far as you know, has no relationship to whatever survey you made on the Urania?

(Deposition of James D. Clarke.)

A. Definitely not. When I make a survey, I make a survey independent of anybody's opinion but my own.

Q. And when you were employed by Commercial Ship Repair, Inc., in San Francisco, was any discussion had at the time of your employment with respect to any litigation between Commercial Ship Repair, a co-partnership in Seattle and the Compania Naviera Limitada, a Panama corporation?

A. Definitely not.

Q. So that your employment now is a mere coincidence?

A. That employment is definitely a mere coincidence.

Q. When you visited the Urania at Winslow were you called upon to make a general survey of the work that had been done? A. No.

Q. You inspected only the Clayton boiler?

A. And the collision bulkhead, that is on orders from Mr. Lund, I mean the ammunition bulkhead.

Q. What had to be removed to repack the feed pumps with Neoprene diaphragm?

A. Remove the pistons, repack, put in new packing rings, [583] repack the flanges, clean the sump, a matter of about an hour's work.

Q. Did you examine the diaphragms that were in the pump? A. Yes.

Q. Before the new ones were put in?

A. Yes.

Q. What was the condition of the diaphragms?

(Deposition of James D. Clarke.)

A. They were hard, quite hard, the wrong kind of material.

Q. Would your charges for that survey have been different had you found no trouble with the boiler''?

Mr. Howard: That is objected to as immaterial and irrelevant.

Mr. Hokanson: May it please the Court, by that question I merely seek to establish that the survey was ordered by the representatives of the claimant corporation, and we will later demonstrate that this survey was ordered subsequent to the libeling of the vessel.

The Court: The question goes to the matter of credibility of the witness, does it not, regarding the amount of his charges?

Mr. Hokanson: No, Your Honor, I believe not. It is a question of whether his fee as a surveyor would have been the same irrespective of what he found; if [584] he had found everything to be in good order, would his fee have been the same.

The Court: Does it relate to credibility of the witness?

Mr. Hokanson: It does not.

The Court: What does it relate to that is relevant in the case?

Mr. Hokanson: The surveyor by his own testimony was appointed by General Steam to make a survey. A survey was made subsequent to the libel-

(Deposition of James D. Clarke.)

ing of the vessel, and for more reasons than one.

Mr. Howard: If counsel had examined the witness on such points as he just mentioned, I think that might have been appropriate, but I do not see the materiality or the competency of the question that is asked on line 11, page 14.

Mr. Hokanson: There is evidence in the record, Your Honor, to show——

The Court: The objection is overruled.

“A. My survey regardless of one hour or 24 hours, the charge remains the same.

Q. Irrespective of your findings?

A. That is right.

Q. Did you discuss at all with the master of the vessel [585] or with anyone else the matter of the failure to remove the ammunition bulkhead?

A. No, I did not. The master was not aboard at that time.

Q. Was Mr. Harry Williams aboard?

A. No. Mr. Harry Williams was not there. Understand, my orders are simply to report back to General Steamship whether that bulkhead had been removed or not.

Q. Now, with respect to your inspection of the telemotor system at Port Angeles, do you remember who conducted the repairs?

A. Yes, the two men that I had supplied by Commercial Ship Repair, machinist and electrician.

(Deposition of James D. Clarke.)

Q. Do you remember the name of the electrician?

A. He is there in my report, I believe. I would have to refer to the report.

Q. You referred to J. H. Woodside, machinist.

A. Right.

Q. Could that be Woodman instead of Woodside?

A. I said Woodside. I wouldn't answer as to that. I don't know.

Q. You state that the system was bled?

A. Yes.

Q. How is that accomplished?

A. That is accomplished by opening certain valves and pumping oil through the system by hand.

Q. And if there is air, I suppose that it emerges with the oil, is that right? [586]

A. Yes, it emerges as a small bubble.

Q. And did you witness that?

A. I did not witness that. That is in my report. It was in the report to me that there was air in the system. Understand, the system worked perfectly by hand. There was no complaint there at all."

Mr. Howard: I move to strike the last part of the answer, after the first sentence, from line 17 on.

Mr. Hokanson: I agree that is not responsive.

The Court: It may be stricken. Beginning with

(Deposition of James D. Clarke.)

“That is in my report,” is that what you mean?

Mr. Howard: Yes, “That is in my report.”

The Court: The request it be stricken is granted.

“Q. Did you observe this wire that your report makes reference to?

A. Yes. Mr. Short, I believe, who was the electrician showed me the wire.

Q. And did you observe what Mr. Short did down in the steering engine? A. No.

Q. So you don't know of your own knowledge whether that wire condition was the cause of the hunting? [587]

A. No. As I said in my opinion, that was the cause of it, which under ordinary circumstances the floating break will make a contact and break it (indicating).”

Mr. Hokanson: I move to strike all but the answer “No” as not responsive.

Mr. Howard: It is his own witness. He is examining the witness himself on cross-examination.

Mr. Hokanson: May it please the Court, I am not bound by——

The Court: That request is granted. It is stricken.

(Deposition of James D. Clarke.)

“Q. Now, how long did you test the system after it had been repaired?

A. I should say the test ran up to about three-quarters of an hour time.

Q. What did you do?

A. Operated the system on hand and electrically.

Q. And it then appeared to be in good order?

A. Yes, with the Chief Engineer and the Captain at the controls.

Q. You state that there was some evidence that repairs were attempted to be made by someone aboard the vessel prior [588] to your arrival. What do you base that on?

A. The fact that the Chief Engineer told me he tried to correct the trouble, tried to find it, which is a normal procedure.

Q. Your knowledge of the *Urania* is then limited to these two items, Clayton boiler and telemotor system?

A. That is right.

Mr. Hokanson: I have no further questions.

Re-direct Examination

By Mr. Howard:

Q. And you verified the fact that the ammunition bulkhead had not been removed?

A. That is right.

Q. Now, did the Chief Engineer tell you whether he found the source of the trouble on the telemotor?

A. No. He said he could not find it.

Q. Was there any indication that he had done any work on the telemotor engine?

(Deposition of James D. Clarke.)

A. No indication except the fact of his own statement that he tried to locate the trouble and couldn't.

Q. The statements that are made in your survey, Exhibit SF-2, do those represent your best opinions as to the nature and cause of the trouble?

A. Yes.

Q. After you had bled one of these telemotor systems, is it necessary to replenish the oil?

A. No, the oil is being replenished while you are pumping [589] the oil from the reservoir tank. The oil returns to the tank and is circulated again.

Q. Do you know what valves there are in the telemotor system? A. Certainly.

Q. Where are those located, please?

A. They are located at different places on various telemotors.

Q. On this particular installation, Mr. Clarke, can you state where the valves are located?

A. Not offhand, no.

Q. Did you check the valves to determine whether they opened or closed?

A. No, the men do that.

Q. Did you see the men check the valves?

A. No. However, I will make this statement, if the valves were left open, the machine would refuse to work."

Mr. Howard: I move to strike the last part of the answer as not responsive.

(Deposition of James D. Clarke.)

The Court: It will be stricken, beginning, "However, I will make this statement," etc.

“Q. Now, going back to the Clayton boiler, I believe you stated on cross-examination that the pistons were removed? [590]

A. Yes, they would have to be removed.

Q. State whether or not it would have been necessary to remove the covers from the pumpheads to take the pistons out? A. No.

Q. It would not be?

A. No. The pistons can be taken out through the bottom, as I recall, on that pump.

Q. Were you present when the pistons were taken out?

A. No. I saw the material that was going into the boat. I didn't see the material being put in.

Q. Then you don't know one way or another whether the pistons were taken out through the bottom? A. That is right.

Q. By the way, do you expect to be in the state of Washington around the 6th or 7th of April?

A. No, not when I am busy here, I can't be.

Mr. Howard: That is all.”

Mr. Howard: That concludes the deposition of Mr. Clarke.

The Court: It is received in evidence as part of respondent's and cross libelant's case in chief.

At this point we will take the noon recess until two o'clock. Before we separate, be sure to get all of your witnesses lined up so that you can go back to [591] presenting the case in its natural order and avoid future situations making it needful to change the order of taking proof.

(At 12:23 o'clock p.m., Monday, April 11, 1949, proceedings recessed until 2:00 o'clock p.m., Monday, April 11, 1949.)

April 11, 1949, 2:00 o'clock p.m.

Mr. Howard: If the Court please, the respondent and claimant will call no further witnesses in defense to the libel.

The Court: As I understand it, so far as the libel is concerned, the respondent rests?

Mr. Howard: That is correct, Your Honor.

Mr. Hokanson: May it please the Court, libelants at this time would like to call four witnesses in rebuttal of certain testimony brought out by the claimant corporation in its defense to the libel.

The Court: You may do that. [592]

A. H. McDONALD

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. A. H. McDonald.

Q. Where do you live, Mr. McDonald?

A. Seattle

Q. What is your occupation?

A. I belong to the firm of McGinitie & McDonald, marine surveyors.

Q. Would you outline for your background and experience in maritime matters?

A. I don't know just what you want to know about it.

Q. When did you first start working with ships?

A. About 1903.

Q. In what capacity?

A. I worked as a shipyard helper around the shipyard.

Q. What did you do after you finished that employment?

A. I worked in the office, up to estimator; then became manager of the Winslow Ship Yard; and after that, [593] twenty years ago, Mr. McGinitie and I opened up our own business of marine surveying.

Q. When did you become manager of the Winslow yard? A. Around 1922.

(Testimony of A. H. McDonald.)

Q. How long were you there in that capacity?

A. Until about 1929.

Q. Was it thereafter that you formed the firm of McGinitie & McDonald? A. That is right.

Q. Since that time you have acted as marine surveyors? A. That is right.

Q. Have you had any experience in addition to survey work in that period?

A. No, we have been strictly marine surveying.

Q. What did you do during the war years?

A. The last war?

Q. Yes. A. The same.

Q. What have you done during the past two years?

A. We have been in business all the time in the last twenty years.

Mr. Howard: We will concede the qualifications of Mr. McDonald.

Q. Have you had any experience in connection with negotiations of prices of ship repair work?

A. Yes, sir.

Q. What has that experience been?

A. We go out on the various jobs around different parts of the country and take full charge of the ship repair work, negotiate prices and complete the job.

Q. Have you negotiated prices recently, within the past two years, outside the state of Washington?

A. I just came back from the Gulf Saturday, New Orleans. I was down there on a job.

(Testimony of A. H. McDonald.)

Q. For how long a period were you there?

A. About two months.

Q. During the year 1947, were you outside the state of Washington negotiating prices?

A. 1947, I was back in Washington, D. C.

Q. In what capacity?

A. I represented the different steamship companies that had claims against the Maritime Commission.

Q. What did your work there involve?

A. Costs of restoring the ships to their condition they were taken in by the Maritime Commission.

Q. Are you acquainted with the practice of the shipyards in this area with respect to surveyors acting as owners' representatives in connection with the negotiation of prices for work done?

A. That is all we do, is represent the owners.

Q. If you know, what is the practice in this area with respect to the authority of an owners' representative who orders work to be done on the vessel insofar as that owners' representative's right to negotiate the final price of work done?

Mr. Howard: I object to that question, because he has not related it to any particular job. He has asked the witness if he knows what the practice is, and he has not identified it either with the controversy in question as to the tanker *Urania* or any other particular controversy or any time.

The Court: Is there included in your objection

(Testimony of A. H. McDonald.)

an objection that he has not qualified the witness as to the kind of work that was done in this case?

Mr. Howard: I would add that to my objection, that he has not qualified the witness as to the work that was involved in the tanker *Urania*, but my previous statement went to the fact that the question asked him to state what he knows without tying it in to any particular time or any particular job.

The Court: The objection is overruled, with leave, however, to qualify him specifically as to the kind of work done at this particular time.

Q. Assume that in August of 1948 a New York shipowner contracts for the repair, alteration and conversion of a [596] vessel at Winslow, Washington; assume that in company with the owner is an independent marine surveyor designated by the owner as his representative with full authority to order extra work over and above the contract items as the work progresses; assume that the extra work is ordered by the owners' representative and that the work is done under his supervision and direction: under those facts, what is the practice or was the practice in this area at that time, if you know, with respect to the right of the surveyor acting in that capacity to negotiate the final price of the work when completed?

Mr. Howard: I object to that question on the ground that counsel has not included in his hypothetical question any assumption as to what the extent of the authority of the surveyor representing

(Testimony of A. H. McDonald.)

the owner was with respect to the approval of the accounts.

Q. Assume one further fact, to wit, that no delineation was placed upon the authority of the representative by the owner to the shipyard doing the work at the time that the contract was made, or at any time subsequent thereto and before the negotiation of the price?

Mr. Howard: I further object to the question on the basis that it contains an assumption I do not believe is supported by the facts which have been testified to date in this case. [597]

The Court: I did not understand clearly whether you said assuming that the shiprepairer was not notified of any such limitation. Is that what you meant to say?

Mr. Hokanson: That is what I said, Your Honor, I believe, and I believe the evidence is clear on that point.

The Court: If that is what you intended to say, and if you have not done it and wish to attach it, the Court is ready to rule.

Mr. Hokanson: That is what I said, as I recall, and I intended to include it.

The Court: The objection is overruled.

Q. With the assumptions that have been made, are you able to answer the question?

A. All I can say——

The Court: Just say whether you are or are not able to answer.

(Testimony of A. H. McDonald.)

The Witness: I am able to answer the question as far as concerns any work that I have gone out on.

The Court: Do you wish to ask him another question?

Q. What was the practice?

A. That I represented the owner entirely in authorizing the work, approving the invoices, agreeing on the prices and authorizing the invoices. [598]

The Court: You asked for the practice, did you not? You did not ask so much about this man.

Mr. Hokanson: Yes, Your Honor.

Q. In this area at that time, if you know, what was the practice with respect to the right of the representative to negotiate final prices on work done, assuming the facts that I have given you?

Mr. Howard: I would like to enter a further objection to this question at this time on the ground that it is not proper rebuttal, a matter that should have been brought out in the case in chief.

Mr. Hokanson: May I reply, Your Honor?

The Court: You may.

Mr. Hokanson: The testimony of Mr. Williams was to the effect that authority of the surveyor was limited with respect to the negotiation of price. I feel that this is entirely proper rebuttal to establish what the practice was in this area at that time, giving the conditions that the evidence has developed here.

The Court: What evidence? The evidence of

(Testimony of A. H. McDonald.)

libelants in chief, or the evidence of respondent in answer?

Mr. Hokanson: The evidence of respondents in answer with respect to the authority of the owners' representative under the facts testified to at this trial.

The Court: Is it your theory that the scope of libelants' evidence in their case in chief is to this extent, that the representative requested and authorized the additions; and in the course of the respondent's case in chief it was developed that they instructed him concerning limitations upon his authority; the libelants did not go into the question of any limitations upon his authority in their case in chief? Is that the theory upon which you offer this as rebuttal?

I am trying to find out what is the theory on which you claim the right to offer this now in answer to the objections stated by Mr. Howard.

Mr. Hokanson: The evidence of Mr. Williams on this point, Your Honor, appears to be in conflict. My recollection of the testimony is that there is no evidence whatever that any limitation on Mr. Williams' authority was communicated to the libelants.

The Court: I am thinking now of comparing what the libelants did in their case in chief, and whether the subject to which this is offered as rebuttal was introduced for the first time in respondent's case in chief.

Mr. Hokanson: That is the theory of this testimony, Your Honor, that Mr. Williams indicated in

(Testimony of A. H. McDonald.)

his [600] testimony that at least in the practice that he had pursued with Mr. Antippas, his authority in other cases had been limited insofar as the negotiation for final prices was concerned, and we are here confronted with a situation that differs from Mr. Williams' previous transactions with Mr. Antippas on the East Coast.

We have him out here on the West Coast with the owner on the East Coast, Mr. Williams ordering the work and clothed with full authority insofar as libelants' knowledge is concerned, and on those conditions I feel that the testimony of this witness is proper rebuttal to meet Mr. Williams' testimony with respect to what practice he had followed in his relations with Mr. Antippas prior to this deal.

The Court: Again I ask, what is your contention as to whether the libelants did or should have gone into this same question in connection with the libelants' case in chief? If you either did or should have done it then, is not the objection by Mr. Howard tenable? Explain why it should not be well taken, if there is any explanation.

Mr. Hokanson: We had no way of anticipating that that matter would be disputed.

The Court: In the first place, was it or was it not [601] anticipated? Did libelants or did libelants not go into this phase of the matter, and were they not required to?

Mr. Hokanson: My recollection is that we did not. Your Honor. I can be mistaken, but my recollection is that we did not develop this in our case in

(Testimony of A. H. McDonald.)

chief, and it is my position that the matter has been raised, at least inferentially, by Mr. Williams' testimony, which is not altogether clear on this point.

The Court: Was there any obligation on the part of libelants to anticipate this and cover it in the scope of the testimony for libelants in their case in chief?

Mr. Hokanson: There is nothing in the pleadings raised with respect to the matter of the extent of his authority. The pleadings merely deny reasonableness of price, and the record shows Mr. Williams signed as owners' representative. We had no way of anticipating they would attempt to repudiate the extent of that authority, and I feel it was not our proper burden to go into that in chief.

The Court: I will hear from Mr. Howard.

Mr. Howard: If the Court please, I have very hastily checked back in my notes, and the first occasion when Mr. Williams was called to the stand as [602] an adverse witness on behalf of libelant, according to my notes, on direct examination the subject of his authority with respect to the additional work was definitely inquired into; and furthermore, on cross-examination there was still further examination as to the extent of that authority.

The Court: Was anything said about practice among ship repairers and owners with respect to such authority?

Mr. Howard: With respect to practice, it is my recollection that I attempted to inquire from the

(Testimony of A. H. McDonald.)

witness about that at the time he was first called to the stand, and an objection was sustained to that question, so I couldn't interrogate him further on it.

The Court: But you were permitted to do it on the respondent's case in chief?

Mr. Howard: I believe that is correct, Your Honor.

The Court: The objection is overruled. I think the Court ruled as you said was ruled during libelants' case because the Court probably thought that subject was not in the scope of the direct examination.

You may inquire.

Q. Read the question, please.

(Last question read by reporter as follows:

"Q. In this area at that time, if you know, what was the practice with respect to the right of the representative to negotiate final prices on work done, assuming the facts that I have given you?")

A. I don't know about this case, but any instances I have gone out on when I was appointed—

Mr. Howard: I object to that as not responsive.

The Court: Your conduct is not called for at all. It is a question of what is the practice at this port or in this vicinity respecting that inquiry. You are not being asked for what you have done.

The Witness: I would say it is the practice in this port that the surveyor, owners' representative, that orders the work approves the prices, negotiates and approves the prices.

Mr. Hokanson: There are certain additional

(Testimony of A. H. McDonald.)

questions which this witness would be competent to testify to, but which would be proper rebuttal of the libelant's case in answer to the cross-libel. With the Court's permission, in order to avoid the necessity of recalling this witness, I would like to ask him some questions at this time. They are very brief.

The Court: Has the opposing side any objection?

Mr. Howard: I hardly see how we can intelligently interrogate this witness at this time on rebuttal to the cross-libel when we are just getting under way with [604] testimony on the cross-libel.

The Court: It seems that way to me. I do not know how you can anticipate what will be brought out on the cross-libel.

Mr. Hokanson: May it please Your Honor, certain of the depositions have already been read into evidence. There has been called into question the competency of the Commercial Ship Repair employees to accomplish certain work. My questions will relate to that matter, for one, and will relate moreover to the question of responsibility with respect to work done on the main engine under terms of this contract, and it would be for that purpose that I would interrogate the witness further.

The Court: So far as competency of the repair yard and its employees is concerned, you should have gone into that in your case in chief before you rested with this and other witnesses. If there is any objection to it, I will hear Mr. Howard further on the point.

(Testimony of A. H. McDonald.)

Mr. Howard: I still maintain that it is hardly proper at this time to present rebuttal evidence on the cross-libel. Although we have had some depositions read, we have a lot more to read, and I think the logical order should be followed here for the purpose [605] of the Court, who has to make the decision.

The Court: I prefer it that way. You do not expect to leave town this week, do you, Mr. McDonald?

The Witness: I have to go to Portland on a job.

The Court: When are you going to leave for Portland?

The Witness: Wednesday. I could put it off and leave Thursday.

The Court: I think it would be better if you would. Do not leave town without communicating with Mr. Hokanson, Mr. McDonald.

The Witness: All right.

Mr. Howard: I would like to ask the witness a few questions.

The Court: You may do that.

Cross-Examination

By Mr. Howard:

Q. You spoke of having been back at Washington, D. C., on owners' claims against the Maritime Commission. That didn't involve repair of vessels, did it?

(Testimony of A. H. McDonald.)

A. Repair bills, yes, we reconditioned the vessels.

Q. Wasn't that a question of reconversion of vessels under requisition charter?

A. Restoring them. We repaired some and some were [606] left outstanding.

Q. It was a question of redelivery under requisition? A. Yes, and repairs.

Q. It wasn't directly involved with any controversy?

A. We had full authority to settle.

Q. It wasn't directly involved with any controversy over repair bills, your trips back to Washington?

A. Yes, some of them were. Repairs were taken into consideration.

Q. It was a question of valuation of a vessel?

A. And the cost of repairs.

Q. In answer to this question that Mr. Hokanson gave you containing certain assumptions, you stated that it was the practice that a surveyor had the authority to negotiate and approve prices?

A. As owners' representative, if he is appointed as owners' representative. As a surveyor or classification society, no.

Q. Forget about a surveyor to the classification society. A surveyor acting as owners' representative, there might be instances when the agreement was such that that practice wouldn't apply?

A. That is the agreement between the owners and

(Testimony of A. H. McDonald.)

the surveyor?

Q. Yes. [607]

A. I know nothing about that.

Q. Isn't it true that you are called out on jobs occasionally to represent the owners when the owners reserve the right to approve prices?

A. I never have. I have gone out unlimited, I have never been limited.

Q. You mean to say that in all these years of experience you have never been instructed to refer the matter of price back to the owners before final O. K. is put on it?

A. No, sir.

Mr. Howard: That is all.

Mr. Hokanson: No further questions.

The Court: You will recall the Court's request that you not leave the city without notifying Mr. Hokanson, and I will add, or his client, Mr. Black or Mr. Featherstone.

The Witness: I understand, sir.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: We will recall Mr. Lindgren.

The Court: Court is recessed for five minutes.

(Recess.) [608]

ARTHUR LINDGREN

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Calling your attention to Libelants' Exhibit 4, can you state whether any discussion was had between you and Mr. Williams with reference to item 14, as to the spare set of boiler coils, at the time Mr. Williams signed the document?

A. There was no discussion at the time he signed the document, Mr. Hokanson.

Q. As to spare boiler coils? A. None.

The Court: Was that with reference to the signing of the original contract, is that what you mean?

Mr. Hokanson: No. 4 is the extras.

The Court: Is that the estimate or specifications?

The Witness: That is the final specifications.

The Court: Were those the basis of the original contract or the extras?

The Witness: The extras, sir. [609]

The Court: Who prepared that document, do you recall?

The Witness: I did, in collaboration with Mr. Williams.

The Court: Does that concern that \$900 item that Mr. Williams said in his testimony he thought was an inadvertant charge by the libelants?

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Yes, Your Honor.

The Court: I am interested to know what this witness knows about that.

Q. Directing your attention to Libelants' Exhibit 7, when that document was discussed between you and Mr. Williams, was there any discussion with reference to spare boiler coils?

A. Would you repeat that, please?

Q. Read the question, please.

(Last question read by reporter.)

A. None.

Q. Directing your attention to Libelants' Exhibit 6, when that document was signed by Mr. Williams, was there any discussion with reference to the item appearing on the last page thereof relating to a spare set of boiler coils at a price of \$900?

A. There was no discussion whatever respecting that at the time the invoice was signed. [610]

Q. When Mr. Williams signed Exhibits 4 and 6, did he examine the items listed on each document?

A. Previous to signing both of these documents, Mr. Williams had ample time to peruse them.

Mr. Howard: I object to that answer as not responsive.

The Court: Sustained.

Q. If you know, did he examine them?

A. He did.

Mr. Hokanson: You may examine.

Recross-Examination

By Mr. Howard:

(Testimony of Arthur Lindgren.)

Q. Did Mr. Williams discuss this item of spare boiler coils with you on any other occasion?

A. Yes.

Q. When?

A. To my recollection, I would say approximately two weeks before the vessel left the yard. Mr. Williams told me, I think in the presence of Mr. Featherstone, that it would be very desirable, in fact, necessary, that the vessel have a spare set of boiler coils aboard. At that time we did not have in our warehouse at Winslow any such article.

However, at my direction our purchasing agent set out to locate spare boiler coils that would fit this [611] particular boiler, and it so happened that we had several sets available in our Bell Street warehouse at Pier 66. Then at Mr. Williams' direction and order, we had a set of those shipped over to Winslow and placed aboard the ship in storage. There was no discussion as to price or otherwise at that time.

Q. That is the only other occasion that you discussed it with Mr. Williams?

A. That is all.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: You may be excused.

(Witness excused.)

J. J. FEATHERSTONE

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Do you recall discussing with Mr. Williams at any time the question of a spare set of boiler coils on the heating boiler? [612]

A. Yes.

Q. When?

A. I can't state the exact date, but it was about the time we were stocking the spare parts in the fore-castle, and he asked me if——

Mr. Howard: That is the answer to the question, right there.

The Court: That is sufficient. Wait until he asks you another question.

Q. What was your discussion?

A. He thought he should not proceed to sea without a set of spare coils.

The Court: Who was that?

The Witness: Mr. Williams.

Q. Was anything further said at that time?

A. He asked me if I could rustle him a set of coils for spares.

Q. What did you do in response to that request?

A. I checked with our warehouse at Winslow, and they had none of the particular type of coil available, so then I called Seattle, talked to Mr.

(Testimony of J. J. Featherstone.)

Black, and apparently in the meantime Mr. Black did not respond. The next day I called our purchasing agent, went over myself, searched our stock and found a set of coils suitable for that particular installation. [613]

Q. Was there any discussion with Mr. Williams with reference to the price of that item?

A. Yes. I didn't know the price myself of the coils at that time, and I discussed it with Mr. Geis, our purchasing agent in Seattle, and he got a price—I don't know how he got it, but Williams said the next day when I told him what the price was, he wanted to talk to the Clayton boiler man, so after he ascertained the factory price from the Clayton boiler man, we arrived at a price of \$900. The factory price was around \$1250.

Mr. Howard: I move to strike the last part of the answer as not responsive.

The Court: The factory price?

Mr. Howard: Yes, Your Honor.

The Court: It is stricken and the Court will disregard it.

You say you got this \$900 price from your purchasing agent in Seattle?

The Witness: No, sir. The purchasing agent told me they cost between \$1200 and \$1300, and I told Mr. Williams that the next morning. He told me he wanted to talk to the Clayton boiler man before arriving at any figure or agreement pertaining to the spare set of coils, which he did and proved

(Testimony of J. J. Featherstone.)

to himself they did cost that much. I called Mr. Black and we agreed upon [614] a price of \$900, because we had two or three sets on hand, and we thought we could let him have it for that price.

Q. Did you discuss with Mr. Williams the job of rebuilding or building the boiler which is listed as item 14 on Exhibit 4?

A. That is the boiler in its entirety?

Q. Yes. A. Yes, sir.

Q. When was that, if you recall?

A. Right after we started the job.

Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately \$6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.

Mr. Howard: I move to strike the last part of the answer.

The Court: It is so ordered. Do not volunteer any discussion if the question does not ask for it.

Q. When you discussed the price of doing that boiler, was there any discussion with respect to the furnishing of a spare set of coils?

A. No, sir.

The Court: It did not register clearly with me what he said about a \$6000 item.

Mr. Hokanson: Would you prefer I ask him the question again?

Mr. Howard: I submit, Your Honor, that part

(Testimony of J. J. Featherstone.)

was within the motion I made to have that answer stricken.

The Court: Read the question and answer.

(Last question and answer read by reporter as follows:

“Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately \$6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.”)

Mr. Howard: I will withdraw my objection, Your Honor. I was mistaken as to that figure. That is the last part of the answer I moved to have stricken.

The Court: Disregard the Court's ruling upon the request to strike part of this answer. It all remains in the record.

Q. How much later in time, if you remember, was it after your original discussion with Mr. Williams concerning the boiler that you discussed with him the matter of furnishing a spare set of coils?

Mr. Howard: I object to that question as leading.

The Court: The objection is overruled. [616]

A. The reason it came up, we were stowing the spare parts—the reason I can recall, it was just previous to the ship's sailing.

Q. About how long before?

A. Not over a week, because we were stowing the stuff in the forecastle.

(Testimony of J. J. Featherstone.)

to himself they did cost that much. I called Mr. Black and we agreed upon [614] a price of \$900, because we had two or three sets on hand, and we thought we could let him have it for that price.

Q. Did you discuss with Mr. Williams the job of rebuilding or building the boiler which is listed as item 14 on Exhibit 4?

A. That is the boiler in its entirety?

Q. Yes. A. Yes, sir.

Q. When was that, if you recall?

A. Right after we started the job.

Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately \$6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.

Mr. Howard: I move to strike the last part of the answer.

The Court: It is so ordered. Do not volunteer any discussion if the question does not ask for it.

Q. When you discussed the price of doing that boiler, was there any discussion with respect to the furnishing of a spare set of coils?

A. No, sir.

The Court: It did not register clearly with me what he said about a \$6000 item.

Mr. Hokanson: Would you prefer I ask him the question again?

Mr. Howard: I submit, Your Honor, that part

(Testimony of J. J. Featherstone.)

was within the motion I made to have that answer stricken.

The Court: Read the question and answer.

(Last question and answer read by reporter as follows:

“Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately \$6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.’’)

Mr. Howard: I will withdraw my objection, Your Honor. I was mistaken as to that figure. That is the last part of the answer I moved to have stricken.

The Court: Disregard the Court's ruling upon the request to strike part of this answer. It all remains in the record.

Q. How much later in time, if you remember, was it after your original discussion with Mr. Williams concerning the boiler that you discussed with him the matter of furnishing a spare set of coils?

Mr. Howard: I object to that question as leading.

The Court: The objection is overruled. [616]

A. The reason it came up, we were stowing the spare parts—the reason I can recall, it was just previous to the ship's sailing.

Q. About how long before?

A. Not over a week, because we were stowing the stuff in the forecastle.

(Testimony of J. J. Featherstone.)

The Court: Is that when he first talked about the spare coil?

The Witness: Yes, sir.

Q. Directing your attention to Libelants' Exhibit 4 and item 47 listed thereon, do you know whether that item was furnished?

A. Partly.

Q. To what extent was it furnished?

A. The clipboards were removed at the after end of the engineroom on the starboard side. The metal lockers were not built.

The Court: What does this refer to?

Mr. Hokanson: Item 47 of Exhibit 4, Your Honor, which relates to an item which Mr. Williams testified was not furnished.

The Court: What is the item, Mr. Featherstone, if you know?

The Witness: I will read it to you, sir. "Item 47. Remove 2 clipboards at after end of engine-room, [617] starboard side, and build in 2 metal tool lockers with shelves, doors, hasps and locks."

The Court: Are counsel agreed as to what the nature of that item is?

Mr. Howard: I understand it is item 47 of Libelants' Exhibit 4.

Mr. Hokanson: I will read it, Your Honor. "Remove 2 clipboards at after end of engineroom, starboard side, and build in 2 metal tool lockers with shelves, doors, hasps and locks."

(Testimony of J. J. Featherstone.)

Q. May I ask that Mr. Featherstone's answer be read?

(Last answer read by reporter as follows:

"A. The clipboards were removed at the after end of the engineroom on the starboard side. The metal lockers were not built.")

Q. Was that by agreement?

A. Yes. We swapped another item on that.

Mr. Hokanson: No further questions.

The Court: What was the other item you swapped for that?

The Witness: We did several things around the engineroom of minor nature. Among them, that wasn't so minor, we built a tool box under the work bench in the engineroom to suffice for those tool lockers that were supposed to be built on this particular item. [618]

The Court: How much money was involved in that item?

The Witness: We added—it would balance the unfinished work in regard to item 47 that was unfinished.

The Court: How much money?

The Witness: \$225.

Recross-Examination

By Mr. Howard:

Q. Do you know what the cost of a complete new Clayton boiler or steam generating plant of equivalent size to the one aboard the tanker *Urania* would have been in September or October of 1948?

(Testimony of J. J. Featherstone.)

A. No, I really don't, not exactly.

Q. Did you ever check it?

A. No, I never did.

Q. What was the value of the labor that went into the removal of the 2 clipboards under item 47 that you have just testified to?

Mr. Hokanson: May it please Your Honor, the witness has not stated he knows what labor went into that item.

The Court: Do you know?

The Witness: About the labor costs of removing the clipboards? [619]

Mr. Howard: Yes.

The Witness: About \$150, flushing off the bulkhead and cleaning it up between the—to clean up the bulkhead and remove all the scales from the fastening required to hold the clipboard, about \$150.

Q. Do you arrive at that figure of \$150 by reference to any other documents that have been offered as exhibits?

A. No, by agreement with Mr. Williams.

Mr. Howard: No further questions.

Mr. Hokanson: No further questions.

The Court: You may step down.

(Witness excused.)

JOSEPH L. SWEETIN

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

(Specifications 837 marked Libelants' Exhibit 13 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 13, can you state what that is, if [620] you know?

A. Yes, sir.

Q. What is it?

A. It is a set of specifications for the conversion of the ex-Navy tanker Y. O. 73.

Q. When did you first see the document?

A. I first saw this particular document on the occasion of first going aboard the Y. O. 73, the *Urania*, on or about August 1, 1948, at Foss Tug and Barge Mooring, Lake Washington Ship Canal.

Q. In whose possession was it at that time?

A. This document was in the possession of Mr. Antippas at that time, and at that time was presented to me by him.

Q. Was there any discussion relative to the document at that time?

A. Yes, there was considerable discussion relative to this document. It had a bearing upon the work that was projected to be effected upon the *Urania*, then the Y. O. 73.

Q. Will you state what discussion was had with

(Testimony of Joseph L. Sweetin.)

reference to this document?

A. In the first instance, accompanied by Mr. Antippas, we had surveyed the vessel and seen the contemplated work, and upon completion of that tour of the vessel had conferred together in the vessel's wheelhouse, at which time this document was brought out as a reference in [621] explaining the work to be done, contemplated to be done.

Q. The document bears certain handwriting on it. On page 1 thereof, can you identify the writing?

A. On this cover page?

Q. Yes.

A. There is handwriting there by me and by Mr. Lindgren of our yard.

Q. Turning the page, state where you find the next writing.

A. On page 1, numbered 1.

Q. Whose handwriting is found there, if you know?

A. That is mine.

Q. What does it say?

A. In reference to the dimensions of the vessels, there is a note which says, "not correct." This note says "not correct."

Q. When did you write that?

A. To the best of my recollection, I wrote this on the evening after having visited the vessel.

Q. Is there any further writing on that page?

A. On that page, there is a paragraph here concerning, "The vessel shall be lengthened by the addition of four cargo tanks by the amount of 42

(Testimony of Joseph L. Sweetin.)

feet 6 inches." I have noted alongside of that paragraph the word "out."

Q. When was that done? [622]

A. At the same time. That was in the evening of the day in which I first received these specifications.

Q. Would you turn the page? What page do you now have before you? A. Page 2.

Q. Is there any writing on that page?

A. Yes, sir.

Q. State what it is.

A. In the fourth paragraph, "The vessel shall be dry docked"—there is a line there in red pencil crossing out the word "for the performance of such conversion items as are required," the words "for the performance of such conversion items as are required" having been stricken out.

Q. Is there any further writing on that page?

A. On either side of the next paragraph, beginning with the word, "The conversion shall meet full requirements of the American Bureau," on either side of that paragraph the word "out" appears in pencil. On the lefthand side the word "out" is accompanied by an arrow pointing toward the top of the page. Immediately below that paragraph, there are lines across the sheet setting off the upper part from the lower part. On the righthand side, opposite paragraph A-7, Miscellaneous Items, the word "Start" is written.

Q. Whose handwriting does that appear to be in?

(Testimony of Joseph L. Sweetin.)

A. It appears to be mine.

Mr. Howard: If the Court please, at this time I would like to enter an objection to this line of questioning. I cannot see the materiality of it, nor can I see that it is proper rebuttal.

The Court: What does it rebut, or tend to rebut?

Mr. Hokanson: May it please the Court, the Court has indicated its desire to have evidence, both documentary and verbal, relating to this entire transaction.

The Court: I would like to correct counsel in your reference to the Court's desire. The Court does not desire a thing in the world about this lawsuit. I have no desires about it. I have indicated issues and proof of issues that might be interesting to the Court, that might assist the Court in determining these issues that are presented by the pleadings. That is all.

Mr. Hokanson: My apologies, Your Honor, for having misstated your previous remarks. May I state it another way? The claimant in this case introduced either yesterday or the day before a document over my objection which purported to be the Sparkman & Stevens specifications.

Mr. Antippas had previously testified that he had furnished copies to at least three different ship repair companies which bore his remarks or comments in connection with what he desired insofar as the conversion of the vessel was concerned. I propose to introduce this document on the ground

(Testimony of Joseph L. Sweetin.)

that it is the copy of the document which Mr. Antipapas furnished to the libelants, and upon which the specifications were subsequently drawn upon which the work was done and the bid based, and for that reason, Your Honor, I feel that it is entirely proper to introduce it at this time to show the Court that the document heretofore entered is not the one which has the best evidentiary value in this case.

The Court: Does it tend to rebut something that Mr. Antipapas as a witness said?

Mr. Hokanson: That is difficult for me to anticipate. This set of specifications is very broad, Your Honor.

The Court: You know what Mr. Antipapas' testimony was, do you not? You are charged with knowledge of it. Does it or does it not tend to rebut something he said or something some other witness said?

Mr. Hokanson: It rebuts the inference that the specifications which were introduced yesterday are the true specifications upon which Commercial Ship Repair drew up another set of specifications. [625]

The Court: Who introduced the set yesterday?

Mr. Hokanson: Mr. Howard, Your Honor, and I believe Mr. Howard would agree that he has previously examined this set in my office, and yet did not call upon me to produce it at this time, and I feel that for the Court's information this set of specifications should be before the Court in this proceeding.

(Testimony of Joseph L. Sweetin.)

Mr. Howard: If the Court please, I have no objection to this if these are the specifications that were handed to Commercial Ship Repair by Mr. Antippas which he indicated to Mr. Sweetin in the wheelhouse discussions were to be used as reference for the work to be done.

I have no objection to those being admitted on the request of libelants. They had an opportunity to offer them when they put on their case in chief, and they didn't, but I will waive any objection to their introduction now.

I do not see the materiality of the examination that is going on now of this witness as to what notations are on it.

The Court: What is the purpose of that?

Mr. Hokanson: To identify the document properly and to establish how this document was discussed at the time between Mr. Sweetin, who has already testified [626] that he drew subsequent specifications which are introduced as Libelants' Exhibit 1.

The Court: Between Mr. Sweetin and whom?

Mr. Hokanson: Mr. Sweetin and Mr. Antippas.

The Court: The objection is overruled. You may continue.

Q. You are referring now to page 2?

A. Yes.

The Court: Make it as brief as possible in view of counsel's statement that he has no objection to the document.

(Testimony of Joseph L. Sweetin.)

Q. Were the writings in the righthand margin made in the presence of Mr. Antippas?

A. Yes, some of them.

Q. On page 2?

A. Some of them. The righthand ones were made in the presence of Mr. Antippas.

Q. Which ones?

A. The words "start" and "out".

Q. On page 2? Did you discuss with him at that time the remainder of the specifications which you now have before you?

A. Yes, we discussed these specifications generally.

Q. If you know, does Mr. Antippas' handwriting appear at any place on the document? [627]

A. There is handwriting here that I don't believe to be mine, and I do believe was put on this document by Mr. Antippas at the time we discussed it. I think both of our handwriting appears on this document. I can't be sure of that.

Q. Subsequent to page 2, all the entries thereafter, if you know, when were they made?

A. They were all made at the same time.

Mr. Hokanson: I now offer the exhibit in evidence.

Mr. Howard: No objection.

The Court: It is admitted.

(Libelants' Exhibit 13 received in evidence).

Mr. Hokanson: No further questions.

Mr. Howard: No questions.

(Testimony of Joseph L. Sweetin.)

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Libelants rest, Your Honor.

Mr. Howard: If the Court please, I would like to put on one witness in surrebuttal.

The Court: On what point?

Mr. Howard: On points that have been raised in rebuttal regarding the Clayton boiler and the Sparkman & Stevens specifications. [628]

The Court: Did you go into it on chief? I understand the theory is that you brought it out first in respondent's case in chief, and now it is permissible to have rebuttal on such matters only as were not gone into or should not have been gone into on libelants' case in chief, and now surrebuttal—I do not quite understand why you have that right. Is there some detail about it?

Mr. Howard: I understood I would have that right, if the Court please, under applicable rules, where certain matters were brought out on rebuttal that we have not previously had a chance to meet.

The Court: What matters?

Mr. Howard: I am speaking about the Clayton boiler as testified to by Mr. Featherstone on rebuttal, and the Sparkman & Stevens specifications and the notations on those specifications that were brought out on this new exhibit that is now admitted.

The Court: That part of it would seem to me to be appropriate, but as to the boiler, it seems to me

you went into the boiler quite extensively on your case in chief.

Mr. Howard: Yes, Your Honor. I only wish to answer that part of the rebuttal by libelants in Mr. Featherstone's testimony when he brought out the information as to a discussion with Mr. Williams as to the amount.

Mr. Hokanson: May I reply, Your Honor?

The Court: You may.

Mr. Hokanson: With respect to the last exhibit, I think Mr. Howard will agree with me that he and Mr. Antippas examined the document in my presence in my office pursuant to a motion for production of documents and yet they chose to introduce another set bearing no notations. I don't see that it is proper surrebuttal at this time to go into that document any further. They had the opportunity to present the true copy, which has some reference to this case, and chose not to do so for reasons unknown to myself.

The Court: I do not believe that affects the right of surrebuttal. As to this document, Exhibit 13, you may proceed with surrebuttal as requested. I am not sure about the other points. I will have to determine that as they are brought out.

Mr. Hokanson: With respect to the boiler, I don't see that there can be any new material developed on rebuttal. Mr. Williams testified as to his impression of that item, and we have merely presented testimony tending to contradict his im-

pression. I think that is the end of it, Your Honor.

The Court: I will see further about that when the time comes. I am inclined to think that if for the first time in rebuttal it was said that a certain statement was made by a certain person, that that person has a right to explain his side of that story.

You may proceed.

DEMETRI ANTIPPAS

recalled as a witness by and on behalf of respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Did you hear the testimony of Mr. Featherstone as to his conversation with Mr. Williams as to the approximate cost of the repairs to the Clayton boiler? A. I did.

Q. Was that cost reported to you?

A. No, it was not.

Q. Did you at any time inquire or ascertain the cost of obtaining a new boiler, complete, equivalent to that boiler installed in the tanker Urania? [631]

Mr. Hokanson: I object to that as not proper surrebuttal within the scope of the issue here.

The Court: I do not believe it is material, whether it was reported to him or not, under the issues of this case.

Mr. Howard: That question was not objected to,

(Testimony of Demetri Antippas.)

Your Honor. I think the question counsel is objecting to is the question as to an inquiry to ascertain the cost of a replacement boiler, new, complete.

The Court: What is your theory on your position?

Mr. Howard: That for the first time on rebuttal it comes out through the testimony of Mr. Featherstone that he claims to have had a conversation with the owners' representative, Mr. Williams, that the approximate cost of the job would be \$6000, and that he discussed it with Mr. Williams before the job was well under way, I think he said he discussed it after the job had started.

I propose to bring out by this witness what relation that amount would have as now testified to for the first time as to the cost of a new boiler, complete.

Mr. Hokanson: Mr. Williams himself testified, as I recall, to a discussion with respect to an agreement as to the price of that boiler, in advance. Now Mr. Howard on cross-examination of Mr. Featherstone [632] asked him whether he had ever inquired into the cost of a new boiler. Mr. Featherstone replied that he never had and that he didn't know.

Now how a question directed to Mr. Antippas at this time as to whether he inquired has any bearing upon the case I don't understand, Your Honor, and I think it is way beyond the scope of surrebuttal testimony.

The Court: It seems to me it is a good example of seesawing. I do not feel clear in my mind about it.

(Testimony of Demetri Antippas.)

I will hear Mr. Howard's statement responsive to the last remarks of Mr. Hokanson.

Mr. Howard: My reason for making this inquiry of this witness on surrebuttal is that for the first time on rebuttal Mr. Featherstone testified as to a conversation with Mr. Williams as to the approximate cost of the job. I claim the right by this witness on surrebuttal to bring out the fact that the amount reported to the owners' representative, according to the witness Featherstone, is out of line with what the cost of a new boiler is.

The Court: I think the Court will rule in favor of the question, on the theory that it is probably better for the trial Court to permit too many questions than not enough questions. You may answer. That is [633] about the only principle I see in favor of it.

The Witness: Yes, I inquired into the cost of a new boiler, complete.

Q. From what source did you inquire?

A. I found out from the Clayton boiler manufacturers in California.

Q. What price was quoted to you for a new boiler equivalent to that installed in the tanker Urania?

Mr. Hokanson: I object to that as involving a hearsay answer; whatever price was quoted to him would be offered for the proof of the truth of the matter asserted by the person inquired of. That person is not here subject to examination, and I

(Testimony of Demetri Antipapas.)

therefore think the question is irrelevant, immaterial and incompetent here as involving a hearsay response.

Mr. Howard: I submit, Your Honor, that a quotation of price in the ordinary course of business would certainly not be considered as a hearsay statement.

The Court: Do you claim that he acted upon the quotation?

Mr. Howard: No, Your Honor.

The Court: If you prove a course of conduct by this witness which is material to this action, I think under some circumstances he might be permitted to give a quotation. A study of cost items may involve [634] quotations of integral parts. It does not seem to me that so far you have laid the foundation for that principle.

The objection is sustained. You can see what he did after he obtained a quotation, if you wish.

Q. Referring to Libelants' Exhibit 13, do you have that before you? A. Yes, I do.

Q. Will you state whether there are any notations in your handwriting on that document?

A. Yes, there are quite a few.

Q. Tell us what pages they are on, very quickly. How many pages?

A. I will go over these pages and tell you. On page 3, on page 6, 6-A, 7, 10, 11—there is two notations by me and there is one which must have been made subsequently. It is right next to an item

(Testimony of Demetri Antippas.)

which we had crossed out. Then on page 12, 13, 14, 15, 16, 17, 18.

Q. All those pages have notes in your handwriting? A. In my handwriting only, sir.

Q. Will you please refer to pages 1 and 2? Are there any notes in your handwriting on those?

A. No. 1 hasn't any notes in my handwriting, and the "not correct," that refers to the dimensions given in this document, which are the dimensions of the lengthened vessel [635] after the lengthening.

Q. Do you recognize the other notations on that document as to who made them, on pages 1 and 2?

A. I have never seen these notations before. When I made the notation, which I made, just the ones in my handwriting written in black pencil, there were no other notations made at that time in front of me.

Recross-Examination

By Mr. Hokanson:

Q. You were in my office about a week ago, were you not? A. I was.

Q. You examined that document, didn't you?

A. I did.

Q. You stated in my presence, did you not, that that was the document you had gone over with representatives of Commercial Ship Repair with respect to new specifications?

A. I did. After seeing my handwriting on it, I did.

Q. You have heard Mr. Sweetin's testimony?

(Testimony of Demetri Antippas.)

A. I have.

Q. Do you deny that what he has said is true with respect to going over that document?

A. There is some handwriting on it which might be Mr. Sweetin's, but it wasn't put on at the time when we went [636] over it. I held the pencil and I had this in front of me and I was writing on it.

Q. You went over this document with Mr. Sweetin?

A. That is correct. I pointed out items I wanted left in and the ones I wanted deleted.

Mr. Hokanson: No further questions.

Mr. Howard: That is all.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Howard: I would like to proceed now, if the Court please, with the cross libel.

The Court: Is there anything that concerns further surrebuttal? Do the respondents rest so far as the libel is concerned?

Mr. Howard: Yes, Your Honor.

The Court: Do the libelants likewise rest now with respect to the libel?

Mr. Hokanson: They do, Your Honor.

The Court: You may proceed.

Mr. Howard: I would like to now read the deposition on behalf of the cross libel of Mr. Arleigh O. Biehler.

The Court: Court is recessed for five minutes.

(Recess.) [637]

Mr. Howard: Mr. Biehler's deposition begins on page 39 of the large volume of depositions.

DEPOSITION OF MR. BIEHLER

"Direct Examination

By Mr. Howard:

Q. Will you state your full name and residence address, please?

A. I live, why, I think it is 11221½ Maple Street, South Pasadena, California.

Q. By whom are you employed?

A. By the Clayton Manufacturing Company.

Q. And they are located where?

A. 1363 Ellis Lane, El Monte, California.

Q. Mr. Biehler, do you expect to be in Seattle or in the State of Washington on or about April 6, 1949, for any reason whatever? A. No, sir.

Q. Your statements and your testimony to be given in this deposition are being taken down by the court reporter in shorthand and later his shorthand notes will be transcribed by him into typewritten form, and we intend to offer that testimony at the time of the trial of this case.

Now, are you willing to waive the reading and signing of your deposition after it has been transcribed?

(Deposition of Mr. Biehler.)

(Discussion by counsel off the record.) [638]

A. Well, I don't see any reason why that should not be all right. All I have to say is not very much.

Q. Then you are willing to waive the reading and signing of your deposition after it has been taken?

A. Yes, that is right.

Q. In what capacity are you employed by the Clayton Manufacturing Company?

(Discussion off the record.)

Q. The question was, in what capacity are you employed by the Clayton Manufacturing Company?

A. I am one of the service men.

Q. And as such what do your duties involve?

A. Mostly repairing steam generators and steam cleaners.

Q. Well, does that refer principally to generators and cleaners manufactured by the Clayton Manufacturing Company?

A. By the Clayton Manufacturing Company, only, yes, sir.

Q. In November of 1948 were you called upon to make some repairs on a steam generator for the tanker *Urania*? A. Yes.

Q. And where was the vessel located at that time?

A. The vessel was located in the Craig Ship-yards.

(Deposition of Mr. Biehler.)

Q. Did you go aboard the vessel?

A. Yes, I did. [639]

Q. And as a service engineer, did you make some repairs on the steam generator at that time?

A. No; at that time I removed the pump from the unit and took it into the plant and repaired it at the plant, and then I took it back and installed it and made the necessary adjustments.

Q. That was while the vessel was still at Long Beach? A. That is right.

Q. State briefly, if you will, please, and describe to us the nature of this unit that you have referred to that was installed for the Tanker Urania.

A. Well, it was a steam generator, if that is what you want—a device for making steam.

Q. Well, what did it consist of? What were the essential parts?

A. It consisted of a water pump and a coil, which was heated by an oil fire, and the water goes through the coil.

Q. Can you describe this particular pump by the manufacturer's model number or by other identifications?

A. No, I can't. The generator, I believe, was what we called at that time a B02-2500, but that pertained to the whole thing.

Q. That includes the coil and the pump?

A. They are all one unit, the whole machine.

Q. And is that unit rated as to horsepower?

A. It raises 2500 pounds of steam and—I believe

(Deposition of Mr. Biehler.)

that is what the "2500" is for.

Q. Do you recall the date upon which you went aboard the Tanker Urania on the first occasion?

A. I don't recall it.

Q. Have you brought with you some records or memorandum?

A. No, no memorandum. Just the service order that I wrote out at the time, and all I know about the date is that the date it was ordered was 11/10/48, and I see the completed date was 11/16/48. I do this work all of the time and my memory isn't too good, so I brought this along.

Mr. Howard: May we have these documents marked for identification as next in order, Mr. Reporter?"

Mr. Howard: I will ask this be marked for identification at this time.

(Invoice marked Respondent's Exhibit A-15 for Identification.)

"Q. Handing you what has been marked by the reporter for identification as Exhibits W-1 and W-2, will you state what those documents are, please, if you can? [641]

A. W-1—I have never seen that before. It was put out in the office and is just a list of parts used and the price.

(Deposition of Mr. Biehler.)

Q. Can you state whether the parts listed thereon are what you used or were used, to your knowledge, in the repair of the steam unit that we have been referring to?

A. I didn't actually see the parts put in, but from what I have been told, all of these parts would have been used in a complete repair of the pump."

Mr. Hokanson: I object to the answer on the ground that it involves what someone else told the witness.

Mr. Howard: I concede the last part of the answer is objectionable, Your Honor.

The Court: The objection is sustained.

Mr. Howard: Beginning, "but from what I have been told," to the end of the answer, from line 6 through line 7, page 43.

The Court: Do you agree that is the place?

Mr. Hokanson: Yes, Your Honor.

The Court: Let the record show that.

"Q. Referring now to the document W-2"—

Mr. Howard: If the Court please, that is page 2 of Identification A-15.

—"can you tell us what that is?

A. That is the customer's copy of the service order that I made out at the time I finished the job.

Q. That was prepared by you? A. Yes.

(Deposition of Mr. Biehler.)

Q. And you have your own copy of that document with you; is that right?

A. I have my own copy of that with me, yes.

Q. And does your signature appear at the bottom of the document W-2?

A. That is right, it does.

Q. State what you found the condition of the boiler and generator to be, and the scope of the damage upon your first inspection above the Tanker Urania.

Mr. Hokanson: What about the time?

Mr. Howard: Well, he has already said he was aboard the tanker on the 10th of November.

The Witness: I was waiting on the dock when the ship came in and immediately went aboard the ship and looked at the boiler. I don't know whether you would understand what I am going to say or not, but this power pump on this boiler consists of six pumping heads; four pumping heads feed the coil with feed water and two of the heads recirculate water from the accumulator to the coil. The two recirculating pump heads are on a separate part of the crankshaft—or pump—a certain part of the pump—and this part of the pump was dismantled when I went aboard the ship. The rest of the pump was together, but it wasn't in operation condition because the circulating part had been dismantled.

Q. Can you go on, please, and tell us what you found?

A. That is about all I can say, because most of

(Deposition of Mr. Biehler.)

the men on board couldn't speak English and I couldn't speak Greek, so I couldn't question them to any extent as to what had happened, other than I did—It seems like they told me there was water or oil leaking—something like that, at some point.

Mr. Hokanson: I shall object to the answer on the ground that he relates a statement made to him by a party in interest, which material is self-serving.

(Discussion by counsel off the record.)”

Mr. Hokanson: My objection is made, Your Honor, on the ground that he is testifying as to what someone else told him with respect to water or oil leaking.

The Court: Do you still insist on the objection?

Mr. Hokanson: I will waive the objection.

The Court: He is entitled to act upon the [644] hearsay they told him, although he may not be, over objection, permitted to relate the details.

“Q. (By Mr. Howard): Well, then, did you actually discover any defect or the cause of any difficulty or deficiency in the pump while it was still aboard the vessel before you removed it?

A. No, I was unable to tell just from looking at the pump just what the trouble was. To find something like that, it has to be taken apart to find the trouble.

Q. How much of the pump did you find it neces-

(Deposition of Mr. Biehler.)

sary to take from the vessel?

A. The complete pump.

Q. And what did you find upon the investigation of the pump upon its arrival at the shop?

A. We found that at some time or other the pump heads had been changed from the position they were in when it originally left the factory—the ones that remained on the pump—and as those heads were line seamed opposite each other there, the changing of the pump heads to different positions caused the misalignment.

Q. Did you find any broken parts?

A. That I can't tell. I don't know whether there were any broken parts or not. [645]

Q. Were you present when the pump was disassembled at your factory?

A. No, I was not. I go out and do this service work, and something like that would take too much of my time, and so I leave it to the men at the factory, and they do that work all of the time."

Mr. Hokanson: At this point I object to the witness' answer respecting what was found concerning the condition of the pump in the factory, since the witness has——

The Court: Where is it?

Mr. Hokanson: Starting at Line 10 on page 45, the answer beginning, "We found that at some time or other the pump heads——".

The Court: If he participated in the finding, he can say that, can he not?

(Deposition of Mr. Biehler.)

Mr. Hokanson: On Line 21, he states that he was not present when the pump was disassembled at the factory.

Mr. Howard: I submit it is entirely likely that this witness observed those points that are mentioned in the answer beginning at Line 10, Page 45, at the time he removed the pump from the vessel before the [646] time it was disassembled at the factory for later observation. I concede he did not witness it himself, but he may have found the conditions at Line 10, Page 45, at the time he removed it from the vessel.

The Court: I do not feel it is appropriate to strike lines 10-15 inclusive. So far as that is concerned, the objection is overruled. How much further down did you object?

Mr. Hokanson: My objection related back to the testimony beginning at line 10. In view of the Court's ruling I have no objection to his answer beginning at line 21.

The Court: The objection is overruled.

“Q. Did you see the pump after it was disassembled?

A. No, I didn't see it until it was all completely reassembled and I took it back down to the harbor.

Q. Referring you now, Mr. Biehler, to Exhibit W-2 (indicating document)——

A. Yes?

(Deposition of Mr. Biehler.)

Q. —you have stated on there that the pump was recently repaired and the parts assembled incorrectly, resulting in misalignment and crankshaft damage.

A. That is right. [647]

Q. Will you state what the source of that information was?

A. I had better put it that someone——

Mr. Hokanson: Before you answer the question, I want to object to the question in its form, on the ground that the witness has stated that he did not see the pump during the process of its repair—did not see it until it was reassembled.

Mr. Howard: That is precisely why I am asking him for his source of information.

Mr. Hokanson: Well, you can see that if he has no true knowledge of the matters stated in Exhibit W-2 that he is not competent to testify as to what someone else said.”

Mr. Hokanson: I will waive my objection at that point.

Q. (By Mr. Howard): Now, Mr. Biehler, you may go ahead and answer my question.

A. Well, I will say that someone on board the boat told me that the generator had been recently overhauled, and, as I say, I took the pump unit back to our factory, and they worked it over and told me what they had found, [648] and I put it in my report.”

The Court: That is appropriate for him, be-

(Deposition of Mr. Biehler.)

cause it was done in the ordinary course of business conduct, to put it in his report, to rely upon those facts put in his report?

Mr. Hokanson: I would object on the ground that it was hearsay. I don't think it has been established yet by the testimony that this would be the type of thing which would fall under business records.

The Court: I am not so sure about what they on board the ship told him as to what took place in Seattle or somewhere, but what was done at his factory by his fellow employees or assisting employees, I think that he has a right to put that in his report if in the ordinary course of business he relied upon it.

Mr. Hokanson: For the record, Your Honor, I will make an objection to what is contained in his report based upon what was told him by factory workers, and will move to strike the first part of his answer, beginning on line 24, page 46, where he states what someone on board the ship told him.

The Court: That part of it, what was said on board the ship, should go out, in my opinion, but not [649] what these assisting employees discovered when they opened up the assembly.

Mr. Howard: As I understand it, lines 24 and 25 of the answer on page 46 are stricken?

The Court: Yes.

A. (Cont'd) "I make out these reports every day, and I work on two or three jobs a day, and

(Deposition of Mr. Biehler.)

this was just another report. There wasn't anything special or nothing else. That is the way we work on these things. If someone else runs into things, then they tell me what the trouble is, and I put it on my report.

Q. And by someone else who had to do with the unit, you are referring now to other employees of the Clayton Manufacturing Company that did the work; is that right?

A. Yes, to other employees of the Clayton Manufacturing Company—but the fact that the pump had been recently repaired, part of it, that I was told on the boat.”

Mr. Hokanson: I move to strike that for the same reason.

The Court: That will be stricken. “But the fact that the pump had been recently repaired, part of it, [650] that I was told on the boat.” That will be stricken.

A. (Cont'g): “The rest of it—that parts were assembled incorrectly, resulting in misalignment and crankshaft damage—that I learned when my own factory actually reworked the pump. I was told quite a bit of the story about what happened up north, and from that I put it down as because it had been assembled incorrectly.”

The Court: That statement will be stricken, “I

(Deposition of Mr. Biehler.)

was told quite a bit of the story about what happened up north.”

“Q. (By Mr. Howard): Now, after the pump had been repaired at your shops, did you then return it to the vessel? A. Yes.

Q. And did you install it aboard the vessel yourself? A. I did.

Q. And how did it operate then? Did it operate satisfactorily?

A. It operated satisfactorily after I installed it, yes. I wouldn't have left it if it hadn't. I checked with [651] Mr. Antippas and he was satisfied with the operation, and that is when I had him sign the bill, and then I left.”

Mr. Hokanson: I move to strike the entire answer on the ground that the question relates to the operation of the pump subsequent to the time it was removed, and the witness previously testified he had no knowledge at the time of its removal as to whether it was in operating condition or not.

Mr. Howard: As to that, I submit that it is entirely proper to show——

The Court: This is subsequent. The objection is overruled as to anything that took place after reinstallation following the overhaul at the Clayton manufacturing plant. It all refers to that, does it not?

Mr. Howard: Yes, your Honor.

The Court: The objection is overruled. I am

(Deposition of Mr. Biehler.)

not passing an opinion on "I wouldn't have left it if it hadn't."

Mr. Hokanson: I move to strike that. No, I will leave it in, your Honor. I withdraw the objection.

"Q. Did you make any adjustments on the controls of the [652] generator or the pump when you were installing it?

A. Oh, yes; that has to be done each time you do any major overhauling work.

Q. Now, Exhibit W-2 lists certain parts used. Did you make that entry (indicating document)?

A. No, I did not. That was made up when they assembled the pump.

Q. You did not make the entries shown on Exhibit W-2?

A. Oh, now, on this one—you mean this one (indicating document handed him by counsel)?

Q. Yes.

A. Why, these figures have been marked over since I wrote them up.

Q. What amount did you show on your records—your copy of this document, W-2?

A. \$685.72.

Q. Is that the total?

A. Yes, that is the total, \$685.72.

Q. Referring to the items or parts used per list—do you have that?

A. As per attached sheets—\$395.40.

Q. And in making that last answer, you were referring to your own office copy or record copy

(Deposition of Mr. Biehler.)

of Exhibit W-2?

A. That is right.

Q. Now, will you refer to W-2 and state whether or [653] not the same figures appear on that document?

A. I see that they have been written in or were written on the top of the original figures—they are not the same as they are on mine. If you would like to see it here (indicating document)—here is the same figure as I have here, but they didn't write them down here (witness compares documents). It is the same total, however.

Q. The same total is shown on both?

A. Yes.

Q. Have there been some corrections made on your own copy of that service order which is now represented by our Exhibit W-2 as to the parts used?

A. Well, I don't know when any of that was made. That was—that is, I had nothing to do with that.

Q. Does it appear that some erasures have been made there as to parts used?

A. Well—all I can say is that it is different from that one—when and where that happened, I don't know.

Q. The total shown on your copy and on Exhibit W-2 is what, again, please?

A. \$685.72.

Q. Well, does that correspond with the corrected totals shown on Exhibit W-2?

A. Yes, it does—it corresponds with the cor-

(Deposition of Mr. Biehler.)

rected totals that appear on Exhibit W-2. [654]

Q. How long have you been employed by the Clayton Manufacturing Company?

A. About four and a half years.

Q. And during that period has your work been all on steam generator matters?

A. As service engineer about two years.

Q. And what training or experience have you had in this type of work prior to that time?

A. I was there about two and a half years in the experimental laboratory of the plant.

Q. Of the same company?

A. Of the same company, yes.

Q. From your experience and from your own personal inspection of the steam generator unit, including the pump, aboard the Tanker Urania, can you state for us your opinion as to the nature or cause of the breakdown or failure of this unit?"

Mr. Hokanson: I object to the question on the ground that it involves the opinion of the witness, who did not personally repair the pump, and whose observation would be based upon statements given to him by persons in the employ of the company.

The Court: The answer takes care of it. He does not answer the question to the prejudice of the party [655] objecting. He indicates his answer is on the document, does he not?

"A. I can only state what is on here (witness indicates document), the findings that they made

(Deposition of Mr. Biehler.)

at the plant; other than that, I would be just trying to remember something that has gone by quite a while.

Q. Do you know what it cost the customer for all of this unit of the type and size that was installed aboard the Tanker Urania?

A. No, I don't have any idea what the initial cost would be.

Mr. Howard: I have no further questions.

Cross-Examination

By Mr. Hokanson:

Q. Mr. Biehler, you didn't exactly observe the work that was done on the pump at the plant?

A. No.

Q. You merely removed it from the ship and took it to the plant for such work as was required, and when it was completed you reinstalled it on the vessel? A. That is right.

Q. And anything that you have stated on Exhibit W-2 by way of comment upon what was wrong is a statement that somebody gave you—someone working at the plant; is that [656] correct?

A. Not in its entirety, no. As to the items' cost, yes.

Q. That was rendered to you by someone else?

A. Yes. And the action taken in removing the pump, with that work of disassembling or reassembling and replacing necessary damaged parts—those items were done with someone else. Readjusting thermal controls and checking low water cutoff—

(Deposition of Mr. Biehler.)

time 30 seconds—that was done by me on board ship at the time I put it together again.

Q. And what about the item of recommendations?

A. That was my own doing—the recommendations were.

Q. Why did you make that out?

A. Merely to impress upon the operator of the boiler certain things that they should check by the manual.

Q. Did they have in their possession a manual put out by your company, to your knowledge?

A. I believe they did; I am not sure, though.

Q. You did not furnish them one yourself?

A. No, we didn't give them the manual, as I recall.

Q. I take it from your comments and your recommendations, Mr. Biehler, that great care should be exercised in following the instructions for the operation of this particular pump.

A. Well, it is of such a nature that it can't be thrown together by someone that doesn't know anything about it—[657] the same as any other piece of machinery, it has to be put together in a certain sequence.

Q. Apart from the assembling of the unit, which was only examined at your plant, you have reference in your recommendations here to operation, maintenance, and repair procedures, and then you state: "Procedures as outlined in manual should be followed closely."

(Deposition of Mr. Biehler.)

A. That is right.

Q. My question, then, is, Is the pump of a character that requires careful maintenance in accordance with the recommendations in your manual?

A. Well, there are certain parts of the pump—the check valves—to be safe they require maintaining about once every two weeks, to keep them clean; and the oil has to be maintained at a certain level in the pump. Outside of that, there is very little that needs to be mentioned particularly, unless a breakdown occurs; but we have found that lots of people, instead of looking up in the manual to find out exactly what they are doing, they will go ahead on their own and maybe they will try to work something over, whereas, if they would follow the manual as they are instructed there, then they would know exactly what they are doing, and would do it correctly, and that was the reason for the recommendation which I made there—not for any specific cause.” [658]

Mr. Howard: I move to strike the last of the answer as not responsive to the question.

Mr. Hokanson: It is cross-examination, and I asked him——

The Court: The first two lines are not responsive, but if there is no objection to them——

Mr. Howard: I will extend my objection to the entire answer.

Mr. Hokanson: I am asking him why the pump

(Deposition of Mr. Biehler.)

requires careful maintenance in accordance with the manual.

The Court: He does not make answer to that; he goes off on a long explanation. The Court is inclined to grant it.

Mr. Hokanson: The entire answer, your Honor?

The Court: Yes. The motion to strike is granted.

“Q. And the instructions in the manual are written out, I presume?

A. That is right. They are very thorough.

Q. Now, when you first inspected the pump and boiler on board the ship, was there any way of determining or did you determine how recently it had been operated?

A. No, there was no way of determining that at all.

Q. And you have stated that the pump was dismantled [659] when you went aboard the ship.

A. Partly dismantled, yes.

Q. And would you state again, please, what parts had been dismantled?

A. The circulating pump, crank shaft, yoke, head flange, and diaphragms, and the pump columns were off the pump, and the motor which ran the recirculating pump was off.”

Mr. Hokanson: It is my understanding that we are numbering the exhibits in the sequence that they have been established here.

(Deposition of Mr. Biehler.)

The Court: Will that conform to the present necessities?

Mr. Howard: This is being offered as a libelants' exhibit. It would come as Libelants' Exhibit 14, according to my records.

Mr. Hokanson: We haven't changed the order on the libel and the cross libel, have we? They are just in sequence?

The Court: That is right.

Mr. Hokanson: Then this would be Libelants' 14.

(Sketch marked Libelants' Exhibit 14 for identification.)

"Q. I wonder if you will please give us a rough sketch [660] of the pump (counsel furnishes witness with pencil and blank sheet of legal size paper).

A. Well, I will give you here just a rough sketch of it.

(Witness draws on the sheet of paper referred to—making certain diagrams, indications and letterings.)

A. (Continuing): Now, this is a very rough sketch.

Mr. Howard: Counsel, can we have him identify those parts?

Mr. Hokanson: Yes, as soon as he has finished his drawing, I will have him identify those parts.

The Witness: Now, that would be the effect of looking down on the pump from the top—right straight down (indicating on diagram).

(Deposition of Mr. Biehler.)

Q. Now, would you please indicate with arrows the various parts of the pump, and describe them by writing in on the sketch the names of the parts which are visible as you have drawn them there?

A. Well, it was—This crankshaft—I will draw it also for these two heads here, and draw a broken line here, and then there was a second crankshaft for these two heads like that (indicating on diagram).

(Discussion by counsel off the record.)

Q. Mr. Biehler, you have drawn for us what you say represents a rough sketch of a pump looking down on it from above. [661]

A. Yes.

Q. And you have identified certain parts by drawing arrows pointing to the parts, and identifying them.

A. Yes; a very incomplete sketch, too, I might add, because I haven't shown the cross members in here that actuate the diaphragms in the pump.

Q. I understand that. We will identify this as Libelants' and Cross-respondents' Exhibit Los Angeles A for identification. A. Yes.

(The exhibit was so designated and marked by the reporter.)

Q. Could you now state, Mr. Biehler, referring to this diagram exhibit, what parts shown thereon were dismantled when you went aboard the Tanker Urania for the first time?

A. I am sure that the recirculating pump

(Deposition of Mr. Biehler.)

flanges and the recirculating pump motor—that is, this and this (indicating on diagram)—were off.

Q. Yes.

A. This had been taken loose from the case. There was a flange that fastens to the case, and they both were off—had been taken off. Other than that, there may have been some other parts out, but I can't recall now just what it was.

Q. Do you know who removed these parts?

A. No, I do not. [662]

Q. The pump could not operate in its then condition? A. That is right.

Q. You have spoken of misalignment——

A. Yes.

Q. ——as being caused by not assembling the circulating pump heads—— A. No.

Q. ——in their original order as installed by the factory. Would you explain that, please?

A. No, I didn't say the circulating pump heads. I said the pump heads.

Q. I beg your pardon. If I have misstated it, then please correct me.

A. Yes, because I don't know which heads were put back in their incorrect position.

Q. You don't know that of your own knowledge?

A. I don't know, and I don't believe anyone else does at this time; but this case here (indicating on diagram), looking in the pump from—I don't know which end they took it from; one side is marked "R" and the other side is marked "L"—right and

(Deposition of Mr. Biehler.)

left—and it may be this is numbered R-1, L-1, and R-2 and L-2, and that these flanges correspond with those markings—they should correspond.

(Discussion by counsel off the record.)

Q. I will ask you now for arbitrary purposes of [663] testimony here to mark “L” and “R” on the marks that you have referred to on the exhibit.

A. Yes——

Q. Would you do that? If you can do that and make that assumption there, then you can speak intelligently about the various parts of the motor from that assumption.

A. Well, I know that they are marked, but I don't know just where, and I don't know from which end you are looking at the pump in relation to the marks.

Mr. Howard: I will object to the witness undertaking to make markings on there of something that he has stated he does not know.”

Mr. Howard: I will waive my objection.

“Mr. Hokanson: Well, I will ask the witness to answer the question, then, by marking the exhibit, and I will ask him the same question as to how the interchange of the pump heads could cause misalignment.

A. At that time—the time we built that pump—the hole in this flange, which I am marking, one with a yellow——

Mr. Howard: Just make a mark on the diagram there. [664]

(Deposition of Mr. Biehler.)

A. Yes; I am just trying to think here—now, in this flange marked “X” and in the flange marked “Z”—they have to be in perfect alignment, so they were put together opposite each other and line reamed from one side to the other in each pair of pump heads, and because they were line reamed separately they had to be reassembled in the same position in order to obtain correct alignment.

Q. (By Mr. Hokanson): Now, did the pump head—would it be numbered to correspond to the place of connection on the pump?

A. That is right; the pump flanges were marked with a number corresponding to their side and location on the pump, the same as the pump body was.

(Discussion off the record.)

Q. Could the pump be assembled without placing the pump heads in their proper position according to the markings from the factory and the pump he operated for any period of time, let's say in excess of one hour, and still maintain proper pressure?

A. That would be entirely possible. It might operate for—oh, it might not operate at all, or you might not be able to turn it over, and again it might operate for quite a time—all according to how close the head happened to align with the one that happened to belong here.

Q. Would it be apparent to you or anyone who is [665] acquainted with these pumps, or a spe-

(Deposition of Mr. Biehler.)

cialist in them, to determine from an examination of the pump whether the pump heads were properly installed?

Mr. Howard: I shall object to the question as too general; asking him if it is apparent to anyone acquainted or experienced with it. The witness can testify as to what would be apparent to him, but I don't think it is competent for him to testify as to what someone else might observe."

The Court: The objection is overruled.

"The Witness: If they looked and found the numbers, yes—that is all anyone would have to do who was any kind of a mechanic, would be to look, and if they found those numbers they would realize that they were corresponding numbers and should be placed in corresponding positions.

Q. (By Mr. Hokanson): Well, any mechanic who has had any experience with pumps in assembling the pump, a pump of this kind, should put them in their proper positions; is that correct?

A. Well, there is no getting away from it, they have to be in their proper positions.

Q. You have difficulties with this type of pump in [666] respect to leaking diaphragms, do you not?

A. No, I can't say that we do.

Q. What——

A. What diaphragm do you have reference to? I might ask you that question.

Q. The diaphragms in the pump heads.

(Deposition of Mr. Biehler.)

A. There is no reason for them to leak at all unless they are cut by some means or other—with high back-pressure caused by scaling the coil.

Q. What is the normal working pressure of these pumps?

A. Well, now, just a minute; just what do you mean by that—the normal working pressure?

Q. Well, how much pressure is exerted by these circulating pumps in the boiler?

A. Any pressure can be exerted by them up to 600 pounds, but in the ordinary boiler they are running about 100 pounds steam pressure—and normal back-pressure would probably run around 175 pounds or less.

Mr. Howard: That is, on 100 pounds steam pressure? A. That is right.

Q. (By Mr. Hokanson): Now, in this pump, could the unit have been operated if the recirculating lines were hooked up?

A. I don't know.

Q. You don't know who disassembled the pump's recirculating lines, do you?

A. That is right; they were disassembled when I first [667] saw it.

Q. And misalignment was caused, as you have been explaining, by failure to fit the pump heads into their proper place?

A. That is right.

Q. And assuming that there was a misalignment here, what effect would that have on all of

(Deposition of Mr. Biehler.)

the rest of the pump's parts?

A. There are bearings in the yoke that connects the diaphragms, and those bearings would be thrown into a bind by a misalignment, and they would very shortly score the crankshaft.

Q. How soon after continuous operation would that occur?

A. Well, it all depends on how much of a bind. There is just no answer to that question. That question is just like asking how long is a piece of string.

Q. Well, are breakdowns frequent in this type of pump?

A. No; very infrequent, I would say. It is one of the most successful types of pump that I have ever seen.

Q. If proper maintenance procedures are followed——

A. ——then about all you have to do is to keep them in oil.

Q. What is the result if you don't keep them at the proper oil level of discharge to other parts that are important in the maintenance of the pumps? [668]

A. They will overheat.

Q. With what result?

A. Oh, burn out your oil light bearings, and just generally freeze up.

Q. Would that in turn cause damage to your crankshaft?

A. It can, yes—it is possible.

Q. Now, referring to what has been marked for

(Deposition of Mr. Biehler.)

identification as Claimant's and Cross-libelant's Exhibit W-1, the first item listed thereon is "Diaphragm washer," and the unit price is \$1.60, and that shows that there was a quantity of six ordered. How many diaphragm washers are used in this kind of a pump? A. Six of that type.

Q. And how many "Diaphragm collars" are used? A. The same amount.

Q. And how many diaphragm washers of the type UH-6734? A. Six.

Q. Now, would you examine this Exhibit W-1 and the parts listed on it, and advise me whether the quantity listed for each part is the quantity required for use on the pump?

A. In other words, you want to know if there are any excess parts?

Q. That is correct.

A. Well, I don't know whether I can or not. I will try, however. (Witness examines the exhibit referred to.) [669]

No, I can't do it, unless I have a manual. There are some of these bearings, thrust bearings, and a few things like that, that I am not able to say whether that is the correct amount or not, because they were made by different numbers, and I wouldn't have that.

Q. Can you tell me what the cost of a new pump of this type is?

A. No, I can't right offhand.

Q. Would it be more or less than \$678.86, if you know? A. I don't know.

(Deposition of Mr. Biehler.)

Q. From an examination of the parts listed on Exhibit W-1, can you state whether all of these parts would require replacement, assuming the pump heads had not been properly assembled on the pump?

Mr. Howard: If you can so state.

(No answer by the witness.)

Mr. Howard: I would like to record an objection to the question as being too general. It assumes a general condition, which seems to me makes it impossible for the witness to render an intelligent answer.”

Mr. Howard: I will waive the objection.

“The Witness: Well, it is pretty hard. [670]

(Discussion by counsel off the record.)

Mr. Howard: Well, read the question.

(The pending question was read by the reporter.)

Mr. Howard: Do you understand the question?

The Witness: Yes, I understand the question, and I am unable to answer it because it would be too general an answer.

Q. (By Mr. Hokanson): Very well. Assuming that the pump heads were improperly assembled, with the resultant misalignment, causing crankshaft damage, can you state whether that condition

(Deposition of Mr. Biehler.)

would require also the renewel of parts such as the diaphragm washers, diaphragm collars, seals, flange, check valve housing, housing assembly, pump head, manifold sleeve, stand pipe and stud——

Mr. Howard: The same objection goes to this question as being too general and not being pinned down to a particular damage resulting from the particular misalignment of pump heads, which would enable the witness to give an intelligent answer.”

Mr. Howard: I will waive the objection.

“The Witness: If you want to go over that one by one, there are some of them I could say yes concerning, and some of them I would have to say that I don’t know. [671]

Q. (By Mr. Hokanson): Can you state as to what parts your answer would be yes?

A. Yes, it would be the seals, the bearings—thrust bearings—and what this is I don’t know, “Fed. bearing,” I don’t know that; crankshaft, of course, and the diaphragm—I don’t know about the yoke. The wristpin would be out; the wristpin bearings would be out, that is, would require replacement by that being out, and the connecting link out, and the flange——

Q. Six flanges.

A. Six flanges, yes—with that I don’t know. And

(Deposition of Mr. Biehler.)

the check valve housing—no. That wouldn't have any bearing on the position of the pump head—or pump flange is what I am trying to say.

Q. In other words, replacement of check valve housing——

A. Yes, evidently it means they were worn.

Q. But it would have no relation to the type of damage that I have earlier stated?

A. That is right.

Q. What about the housing assembly?

A. I am not so sure what that is, to tell the truth.

Q. One pump head?

A. That might have been cracked by misalignment or something like that.

Q. The manifold sleeve? [672]

A. Those probably had to be renewed upon taking it apart.

Q. But not by reason of damage to them?

A. No, I don't believe so.

Q. What about the stand pipe?

A. The stand pipe—no.

Q. What about studs? A. No.

Mr. Howard: My objection, it will be understood, runs to each and all of your questions as originally stated?

Mr. Hokanson: Yes, that is right.

* * *

Q. Now, if, as you stated—and we are assuming it for the purpose of this question—the four pump

(Deposition of Mr. Biehler.)

heads were not in their proper order, why would it be necessary to replace only one pump head?

* * *

The Witness: I am just trying to think what pump head [673] it is. The pump head wouldn't have had a thing to do with the misalignment—they replaced one standpipe and one pump head—evidently one of these broke and they had to replace the standpipe and one pump head—and they replaced all of them, because either all were damaged by misalignment or some of the parts were damaged by it—I would say.

Q. Do the pump heads screw into the flanges?

A. The standpipe screws into the pump head, and the pump head is bolted to the flange.

Q. (By Mr. Hokanson): You said that someone aboard the ship told you that the pump heads had recently been overhauled. Do you remember who that was? A. Not well enough to say.

Q. Was it a member of the crew of the ship?

A. Well, as long as I feel uncertain, I wouldn't say. I know who I think it was, but maybe it is better I shouldn't say as long as I am not absolutely certain about it.

Q. But who do you think it was?"

Mr. Howard: I object to that. We have already had a ruling on the question of what has been told him on the ship as being improper.

(Deposition of Mr. Biehler.)

The Court: This is cross-examination by Mr. Hokanson?

Mr. Hokanson: Yes, Your Honor. [674]

The Court: In view of the Court's previous ruling, do you wish to proceed on this hearsay?

Mr. Hokanson: Subsequent testimony—I don't think I am waiving my original objection.

The Court: How can it be proper for you to have before the Court your cross-examination upon a subject matter ruled out? If the original inquiry is ruled out, wouldn't that take with it your cross-examination?

Mr. Hokanson: I am willing to strike what follows, Your Honor. It relates to the witness' conversation with a party to the action. [675]

“Q. You don't know, of your own knowledge, how bad the misalignment was? A. No.

Q. Did any of the men in your shop tell you how much it was off?”

Mr. Howard: I object to that as hearsay.

The Court: He included that in his report, the assisting workmen, and on that theory the objection is overruled. However, the answer relieves the objection, I think.

“A. No; they merely told me that the pump head flanges were out of position.

(Deposition of Mr. Biehler.)

Mr. Hokanson: That is all.

Redirect Examination

By Mr. Howard:

Q. Did you notice whether there was more than one connecting bolt installed in the Tanker Urania when you were on board on November 11th?

Mr. Hokanson: That is objected to as being beyond the scope of any cross-examination.”

Mr. Howard: I will waive that question, Your Honor. [676]

“Q. On Exhibit W-2 there is an entry of 56.25 hours at \$4.50, under the column “Labor”; did you make that entry? A. Yes, I believe I did.

Q. Is that the going rate for that type of labor?

A. \$4.50 an hour; yes, that is right.

Q. And there is another item of labor of 4 hours at \$6.75.

A. That should be in another column; the copy didn't line up.

Q. That belongs in the overtime column, then, does it?

A. That is right—time and a half for overtime brings \$6.75 an hour.

Q. Were you able to tell what the oil level was in the pumps when you first saw the generator and the pump aboard the vessel? A. No.

(Deposition of Mr. Biehler.)

Q. Now, this operation manual that you referred to on cross-examination—for whose use is that intended? A. The man that runs the boiler.

Q. Is it also provided for the use of anybody from a ship repair yard that might make repairs of the boiler?

A. Well, yes, we have them available to anybody. I believe it is \$1.00 a copy.

Q. You stated on cross-examination that, assuming that these items were improperly assembled, it was conceivable that the unit might continue to operate for [677] some time.

A. Well, it is conceivable.

Q. But for how long a time?

A. Well, as I said, that all depends on the amount of the misalignment.

Q. If the misalignment were minute, the engine might continue to operate for some time?

A. Yes.

Q. For a matter of days, do you think?

A. If it was small enough, it might continue indefinitely. That is, if it was in the tens of thousands, or something like that.

Q. Now, Mr. Biehler, if I understood you correctly, you stated on cross-examination that you did not realize the cause of the breakdown of this unit at the time you went aboard the ship and removed the pump. A. That is correct.

Q. Did you examine the head flanges at the time to determine whether the numbers corresponded

(Deposition of Mr. Biehler.)

with the other numbers? A. No, I did not.

Q. But you could have done that at that time?

A. Oh, it could have been done—by turning the pump upside down—which is quite a chore in itself.

Q. You would have had to turn the pump upside down to [678] check on it?

A. I believe the numbers are on the bottom of the case—I am not sure, however.

Q. If the numbers were on the bottom side of the case, it would be necessary to take the pump off?

A. That is right.

Q. To determine whether it was misalignment?

A. Yes, sir.

Q. Was there any indication that that had been done aboard this ship?

A. No, I believe the pump was fastened down when I got there.

Mr. Howard: Those are all the questions I have.

Recross Examination

By Mr. Hokanson:

Q. Mr. Biehler, a pump can be fastened down and removed and fastened down again a number of times without any visible indication as to whether or not it has been removed; isn't that correct?

A. That is entirely right.

Q. So that before that dismantling, it might have been removed and put back on board the ship again without your knowing it? A. Oh, yes.

Q. Did I understand you correctly to say that

(Deposition of Mr. Biehler.)

you were [679] not certain whether there were numbers on the flanges of the pump heads to correspond?

A. No, you misunderstood me there. I said I didn't know where the numbers were. There definitely are numbers on that type of pump.

Q. This pump is not so complicated that a competent mechanic couldn't put it together, is it?

A. No, it isn't that complicated.

Q. And it would be rather stupid of a mechanic to put the pump heads in the wrong place, wouldn't it?

Mr. Howard: Just a minute. I shall object to the form of that question. I think counsel is certainly entitled to lead the witness on cross-examination, but to ask the witness to testify that somebody was stupid if they do something—I think that is highly improper.”

Mr. Howard: I object to the form of the question, Your Honor.

The Court: I think that should be sustained.

Mr. Howard: Line 5, page 73.

“Q. In other words, it would be your testimony that a reasonably competent mechanic in assembling this pump, if [680] he put them together wrong, wouldn't be doing something that was obviously negligent?

(Deposition of Mr. Biehler.)

A. Well, I believe that the manual gives a complete breakdown of the pump and tells how it should be put back together again, and anyone, when they take something apart—a mechanic especially—will ordinarily mark it to put it back the same as when it came apart—when there are several similar parts; so it would be more carelessness than anything else if it was put together wrong.

Q. Do you mean it would require a careless mechanic to put these together wrong?

A. Well, I cannot say that.

Q. Well, what would you say?

A. Well, I would say that the man was careless in that particular instance, but he might not be careless at all times.

Q. How big is this pump in terms of outside dimensions?

Mr. Howard: I shall object to that as improper recross-examination.”

The Court: Overruled.

“Mr. Hokanson: You may answer.

A. Oh, I would say—well, I would have to measure [681] it out here—I would say roughly about two feet long by about 12 to 14 inches wide—the main body of the pump, that is—this part in here (indicating on diagram).

(Deposition of Mr. Biehler.)

Q. And if the pump is damaged, how long does it take you to disassemble it?

A. Well, now, that I don't know—just how long it would take. I have never disassembled one of that type of pump, and, of course, it would depend a lot on the man disassembling it. If he knew nothing about it, it would take him quite a while.

Q. But a person acquainted with it would be able to take it apart in about how long?

A. Oh, it would be just a guess on my part, but I should say in three hours.

Q. Well, if the parts were damaged, requiring replacement, how long would it take you to put it back together again with new parts on hand?

Mr. Howard: I shall object to that as not specific as showing the nature of the damage and the number of the parts that would have to be replaced and installed—but this is so general that surely the witness wouldn't give an intelligent answer."

Mr. Howard: I will waive my objection. [682]

"Mr. Hokanson: Your answer is that you couldn't say?

A. That is right; there is so many things that go into that.

Q. Yes, I understand; but specifically how long would it take you to put it back together again with these parts involved.

(Deposition of Mr. Biehler.)

Mr. Howard: I shall object to that again as not sufficient basis shown for the answer, in that the witness hasn't been apprised of the extent of the damage caused, nor investigated the reinstallation of the particular parts enumerated; and, further, on the ground that this is improper recross-examination."

Mr. Howard: I will waive my objection.

"The Witness: I can't answer the question anyhow.

Q. (By Mr. Hokanson): You don't know?

A. No, I don't know. There are too many things enter into it.

Mr. Hokanson: For the record, the purpose of this examination on recross-examination is to develop further the matter of the number of hours spent in repairing this pump, which was brought out on redirect examination. [683]

Q. Now, Mr. Biehler, would you say that 56¼ hours at \$4.50 an hour and for hours at \$6.75 an hour, a total of 60¼ hours, was a reasonable period of time to put this pump together involving the re-assembling of the parts listed on Exhibit W-1?

Mr. Howard: I shall object to this last question on the ground that the witness has testified on direct examination and on cross-examination that he did

(Deposition of Mr. Biehler.)

not attend in the shop of the Clayton Manufacturing Company at the time this pump was disassembled and repaired, his testimony being that he only participated in the removal of the pump from the unit aboard the vessel and its reinstallation after it had been repaired in the shop where it was manufactured.”

Mr. Howard: I will waive my objection.

“Mr. Hokanson: You may answer the question as an expert on pumps, Mr. Biehler.

A. The time shown on that service order isn't the time it took to repair the pump. The time that it took to repair the pump is not that time—that time shows the complete time that myself and other men, and possibly several others, spent on the job.

Q. How much of that time was passed on your time discussing this matter with Mr. Antippas?

A. Very little of it.

Q. How long did it take you to remove the pump from the vessel?

A. Well, this time, as I said before, includes all my travel time and the time of removal and the time in the shop, and all other kinds of time that was spent on it, so—I was down there one afternoon, practically the whole day, when the boat came in, and I was there a certain time in the morning when

(Deposition of Mr. Biehler.)

the boat didn't get in until afternoon, and all of that time is counted on my time.

Q. At how much per hour? A. \$4.50.

Q. Did they give you an estimated time of arrival when you went down there to wait for the boat? A. Yes.

Q. And how late were they?

A. That I don't recall.

Q. And who charges \$6.75 per hour?

A. That is time and a half.

Q. For overtime? A. Yes.

Q. Why was overtime required on this job?

A. Let's see—what was that? I don't recall exactly. [685] It would just be a guess on my part, but it was quite evidently work done overtime. It took me until after 4:30 to get back to El Monte after working on the boat.

Q. Could that pump be repaired aboard ship?

A. Yes, if they had the proper equipment or the facilities to make the proper equipment, it could be done—but it would be a large undertaking.

Q. Could you repair it aboard ship if you had the parts with you?

A. Well, that question can be answered the same way—if they had the proper equipment aboard ship—if they had the presses and one thing and another that you needed to put the pump together with—it could be done, but it would have cost more money to have repaired it aboard ship than it would to take it up to the plant as we did."

(Deposition of Mr. Biehler.)

Mr. Hokanson: I move to strike the last portion of the answer as not responsive, with reference to the cost of repair aboard the ship.

Mr. Howard: I think that has a bearing upon the question.

The Court: I believe the Court should overrule that, and that is the order. [686]

“Q. By the Clayton Manufacturing Company?

A. Oh, yes—if I had done it aboard the ship.

Mr. Hokanson: That is all.

Redirect Examination

By Mr. Howard:

Q. If a shipyard in another city undertook repairs on the unit that we are speaking of, would you recommend that they obtain a manufacturer's manual on it before making the repairs?"

Mr. Hokanson: That is objected to as improper redirect examination.

The Court: It is speculative. The motion is granted.

Mr. Howard: Then that completes the deposition of this witness.

At this time, I would like to offer Identification A-15.

The Court: Is there any objection?

Mr. Hokanson: I want to register the objection that the document contains a hearsay statement admitted by the witness for the record. [687]

The Court: Which one are you referring to?

Mr. Hokanson: The second page of the document, wherein comments are made with respect to the damage.

The Court: I believe included in the objection is a notation on the second page, "Pump recently repaired, parts assembled incorrectly, resulting in misalignment and crankshaft damage." That is the phrase referred to?

Mr. Hokanson: Yes, and I object to the first page also.

The Court: We have already gone over this, haven't we?

Mr. Howard: Yes, in his testimony the Court ruled as to that portion of it, but I offer the exhibit as to the other parts, being a report made in the regular course of business.

The Court: The Court strikes that part of page 2 objected to, which part the Court just read, and the Court will disregard that statement made on that exhibit. Now, what is it with respect to the first page?

Mr. Hokanson: With respect to the first page, I object to the admissibility of that document on the ground that the witness has not established that all of the parts and the time that make up the total

amount of the invoice were necessary and proper to the repair of the pump. [688]

Mr. Howard: I examined this witness in the deposition, if the Court please, as to the charges, to the extent of his knowledge. That is the only testimony that I have from this witness on it.

The Court: What did he testify on it? Did he discuss the hours, or the reasonableness thereof, and the reasonable per-hour charge?

Mr. Howard: Yes, Your Honor. On cross-examination, he went into the question of whether all of the parts listed on the first page might have been included in the repairs necessary to this unit, and since he was not present at the factory when the unit was opened up, he could not testify that all of the parts were necessary.

The Court: I believe his testimony *prima facie* authenticates the labor charge. I am not so strongly convinced about the parts, in view of what you have just said about the testimony.

Mr. Howard: I offer it for what it is worth in establishing this account.

The Court: It seems to me you have to prove the parts were needed.

Mr. Howard: If the Court would like to reserve ruling on the admissibility of the first page of this exhibit, I will undertake to get additional testimony. [689]

The Court: I will reserve ruling on the admissibility of the whole exhibit, both pages. The part

which I just a moment ago ordered stricken and the Court will disregard it, that will stand no matter what may happen in the future with respect to the remainder of page 2.

Mr. Hokanson: Your Honor, so that there may be no misunderstanding, I wish at this time to renew my objection to all of this testimony relating to subsequent damage or repairs to the vessel on the ground that the evidence as it now stands on the libel demonstrates that this ship was accepted and approved by the owners and classified and approved by the American Bureau of Shipping, and that anything that happened thereafter is a risk of the owner and cannot properly be attributed to Commercial Ship Repair, the libelants in this action.

The Court: That question has been raised before, has it not, and the Court has ruled upon it?

Mr. Hokanson: Yes, Your Honor.

The Court: The same ruling as previously made, with the understanding as previously noted that the objection goes to this whole line of testimony, and the same ruling whenever appropriately applicable. The Court makes the same ruling as and when the objection [690] may be regarded as having been made. Also, it is without prejudice to counsel renewing the objection at any and all stages of the proceedings as he may be advised.

Mr. Hokanson: May I at this time, without prejudice to my objection, offer Libelants' Exhibit

14, which is the document identified by Mr. Biehler in his testimony that has just been read.

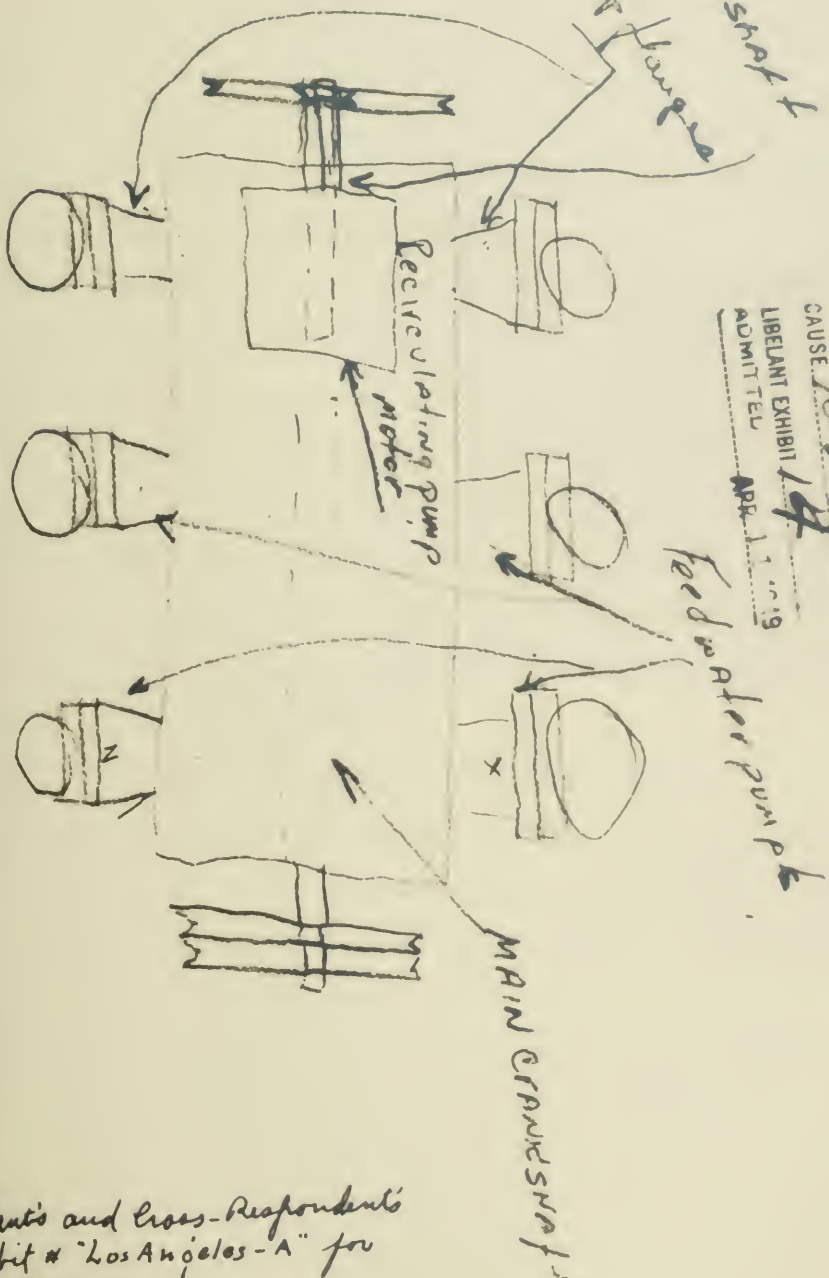
Mr. Howard: No objection.

The Court: It is admitted.

(Libelants' Exhibit 14 received in evidence.)

W. R. H.
 12322

Recirculating pump
 Recirculating pump
 Recirculating pump



CAUSE 18766
 LIBELANT EXHIBIT 14
 ADMITTED APR 11 1949

12322

Libelant's and Cross-Respondent's
 Exhibit # "Los Angeles - A" for
 identification.
 W. R. Heathcote, R.P.
 March 24, 1949.

The Court: Those connected with this case are excused until tomorrow morning at 10 o'clock.

(At 4:45 o'clock p.m., Monday, April 11, 1949, proceedings adjourned until 10:00 o'clock a.m., Tuesday, April 12, 1949.) [691]

April 12, 1949, 10:00 o'clock a.m.

Mr. Howard: I would now like to read the deposition of S. W. Newell.

Mr. Hokanson: Your Honor, may I address the Court? So that there may be no misunderstanding, may it be understood that any evidence heretofore introduced by either side touching the cross libel incidentally while presenting evidence on the libel itself may be considered as going to the cross libel, and that additional evidence need not be introduced covering the same material merely because of the order of proof? [692]

The Court: Is there any objection?

Mr. Howard: I think in view of the nature of the case and the necessity for depositions and numerous witnesses, that is an entirely reasonable request, and I acquiesce in it.

The Court: It is approved by the Court.

I will say to both sides, you would have to show me some very convincing authority to keep the Court from taking that attitude in this case, because it seemed to me at the beginning of the trial inconvenient that you should dispose of one case

entirely and keep anything from going in that was not important with respect to the other, that is, between the libel and the cross libel.

Mr. Howard: I believe we can start on page 3, line 18, of Mr. Newell's deposition.

In this case, the witness did sign the deposition. He has read and signed the deposition.

DEPOSITION OF SIDNEY W. NEWELL

"Q. (By Mr. Howard): Mr. Newell, will you state your full name and address, please?

A. Sidney Wynne Newell. My home is 2622 Clay Street in Alameda, California.

Q. What is your occupation, Mr. Newell? [693]

A. Vice-president, The Union Diesel Engine Company.

Q. Where does that company maintain its principal office?

A. 2200 East Seventh Street, Oakland, California.

Q. Mr. Newell, do you expect to be in Seattle, Washington, for any reason on or about the 6th day of April, 1949? A. No, I do not.

Q. This deposition is being taken down by the court reporter and will be transcribed and typed up from the notes that he is making. Do you consent to this deposition being read in evidence from the notes as transcribed by the court reporter without the necessity of your reading the testimony back

(Deposition of Sidney W. Newell.)

and verifying the answers that you give, and signing the deposition.

A. I think I ought to read it first.

Q. You desire to read it?

A. I should prefer to.

Q. Mr. Newell, will you please state what experience you have had by way of education or training as an engineer?

A. I was graduated from Webb Institute of Naval Architecture in New York City in 1937. Subsequent to that date I have been employed by the Union Diesel Engine Company in various capacities.

Q. What degree did you receive from Webb Institute of Naval Architecture?

A. I received a Bachelor of Science degree in Naval Architecture and Marine Engineering. [694]

Q. Since 1937 has your principal work been with Union Diesel Engine Company?

A. That has been the only job I have had.

Q. Does that work involve the engineering aspects of the construction, manufacture of Diesel engines?

A. Yes, it does.

Q. Mr. Newell, have you brought with you today a manual relating to the Diesel engine manufactured by your company which was installed aboard the former Navy tanker YO-73?

A. Yes, I have."

(Deposition of Sidney W. Newell.)

Mr. Hokanson: Mr. Howard, at this time for the record I would like to lodge an objection to the introduction of any testimony relating to the main engine of the tanker Urania on the ground and for the reason that it has already been established by the evidence that any work on the main engine was done subject to the supervision of the chief engineer and representative of the owner, and that consequently any alleged defects or damages that subsequently occurred are not chargeable and are not proximately related to any of the work done by the cross-respondent in this action.

The Court: The objection is overruled. Do you wish the same arrangement with respect to the continuing effect of your objection?

Mr. Hokanson: May that be understood?

Mr. Howard: It is agreeable, Your Honor.

The Court: It is agreeable to the Court. Let that be understood.

Mr. Howard: May we have that exhibit marked for identification?

(Union Diesel manual marked Respondent's Exhibit A-16 for Identification.)

“Q. Can you identify that for us, please?

A. It is identified as Instruction book and parts list for main propelling engine installed in U. S. Navy gasoline, fuel oil and water barges, contracts NXs6407 and NXss-6407, YO 65-79, YOg 5 and 6,

(Deposition of Sidney W. Newell.)

YO 105-133, YOg 32-37, YW 83-95, Manufactured by the Union Diesel Engine Company, Oakland, California, U. S. A., 1943.

Q. Do you have an extra copy of that manual available that can be used for the purpose of this deposition?

A. You can use that copy there for the purpose of the deposition.

Q. Do you desire to have this returned to you?

A. Yes, I do. It is the only one we have left.

Mr. Howard: This is off the record. [696]

(Remarks off record.)

Mr. Howard: I would like to have this identified by the Notary as Claimant's and Cross-libelant's Exhibit O.

(Notary Public marks Exhibit O.)

Q. (By Mr. Howard): Mr. Newell, please feel free to refer to this manual that has now been identified as our Respondent's Exhibit A-16. Will you kindly give us a brief statement describing the main engine, which was installed aboard Tanker YO-73?

A. First of all, the engine is identified as a naturally aspirated model V-6, direct reversible Union Diesel engine. It has six cylinders, each 14 inch bore by 19 inch stroke. The engine develops 560 horsepower at 325 r.p.m. It is one of approximately a hundred that were built for the same type of vessel for the Navy Department."

(Deposition of Sidney W. Newell.)

Mr. Howard: I would like at this time to offer Respondent's Exhibit A-16.

Mr. Hokanson: No objection.

The Court: It is admitted.

(Respondent's Exhibit A-16 received in evidence.) [697]

"Q. Referring to figures A and B in Exhibit A-16, does that truly represent the side view from opposite sides of the main engine under discussion?

A. Yes. I believe that is an actual photograph of the YO-73 engine. If it was not, they are so closely alike you couldn't possibly tell the difference."

Mr. Howard: If the Court please, the witness is referring to figures A and B in Exhibit A-16.

The Court: Starting with Figure 1, the sea water system? They are numbered Figures 1, 2 and 3.

Mr. Howard: I believe I can point it out to Your Honor.

"Q. I wonder if you would point out to us the principal parts of this engine such as the location of the cylinders, the cooling system, the air starting system and points of that general description?

This is off the record.

(Remarks off record.)

(Deposition of Sidney W. Newell.)

A. Since this is not a drawing, it is truly a photograph which has not been retouched except to take out the extraneous background we can't show too much of the interior of the engine, but basically the engine consists of a bed. [698]

Q. You have marked on figure A of Respondent's Exhibit A-16 an arrow under which has been marked the word "bed".

A. That is correct. The bed is the main structural member of an engine. It runs substantially the entire length of the engine. Seated in the bed which I cannot show too well on this photograph is a crankshaft which has eight main bearings. It is located athwartships in the center of the bed itself.

Q. Can you indicate by an arrow the location of that crankshaft although it wouldn't show as it is inside the engine itself?

A. Well, if you will refer to photograph B in Respondent's Exhibit A-16, we can see the eighth main bearing which I will identify as number 8 main bearing of the crankshaft. That shows one end of it. On photograph A it is a bit difficult to identify just where the crankshaft comes through. I can indicate in general that this is the approximate location of the crankshaft's forward extension.

Q. And you have marked that with an arrow with those same words on figure A?

A. That is correct, sir. Above the bed there is the word "Union" imposed on each cover giving you access to the crankshaft, the bearings, the con-

(Deposition of Sidney W. Newell.)

necting rod bearings and other principal oiled parts of the engine.

Q. What is above those doors or covers? [699]

A. Above those doors—let us put it this way, the doors themselves are located on the crankcase which I will mark with the word, “crankcase”. Above the crankcase are the cylinders of which there are six.

Q. And you have marked the cylinders with an arrow on figure A?

A. Yes, I have marked No. 1 cylinder. Above the cylinders there are the heads one of which I have so indicated. Above each cylinder rests a camshaft housing which I have so marked. The camshaft which is located within the camshaft housing is driven from the camshaft through gears up through a vertical shaft which I have so indicated.

Q. On figure A? A. On figure A.

Q. Does either of these pictures show the lubricating oil cooler for the main engine?

A. Yes. Figure B shows the lubricating oil cooler which I have marked.

Q. Does figure B show the fresh water coolers for the engine?

A. Yes, there are two fresh water coolers which I have so indicated.

Q. On either figure A or figure B, can you show us the tubing by which the lubricating oil is directed into the cylinder rubbing surfaces?

A. Yes, there are two methods of lubricating the cylinders. [700] One is through a pressure lubricator

(Deposition of Sidney W. Newell.)

which I have indicated on figure A. This box is the pressure lubricator.

Q. You have circled the box that is the pressure lubricator?

A. That is right. I have circled it in red pencil.

Q. Now you have circled the pressure lubricator in red pencil? A. That is correct.

Q. Did you say there was another method of lubricating the cylinders?

A. This pressure lubricator leads through a copper tube to each cylinder such as I have circled on No. 4 cylinder, all on figure A. I have marked a line to cylinder No. 4.

Q. That is circled to show the tubing entering cylinder No. 4?

A. Yes. Also on figure B you can see the corresponding lines to cylinder No. 1, cylinder No. 2, cylinder No. 3, cylinder No. 4, or rather I should say, cylinders Nos. 1 and 2. You cannot see cylinder No. 3, but you can see cylinders Nos. 4, 5 and 6.

Q. You have circled those with a red pencil on figure B? A. On figure B, yes, sir.

Q. Is the lubricating oil cooler also known as a heat exchanger?

A. Yes, a lubricating oil cooler is a specific type of heat exchanger. [701]

Q. Can you describe generally to us how that lubricating oil cooler functions?

A. This particular lubricating oil cooler is very much like the radiator in your automobile with the exception that the lubricating oil passes through

(Deposition of Sidney W. Newell.)

the cooler where water passes through the radiator on your automobile and sea water passes through the cooler where air passes through the radiator on your automobile.

Q. What material actually is used in the interior and internal sections of that cooler?

A. That cooler was built with a so-called cupronickel material. The coolers were built and tested to Navy Department specifications 66-C-1-(Int).

Q. Does the oil flow through the cooler or heat exchanger by gravity or is it forced through under pressure?

A. The lubricating oil is forced through the lubricating oil cooler by means of a lubricating oil pressure pump which I have circled in red on figure A and so indicated.

Q. At what pressure does the oil run through the cooler normally?

A. Approximately 20 pounds per square inch.

Q. Does that vary?

A. That pressure may vary. We have a pressure regulating valve which I have marked on figure A. The working pressure is approximately 20 pounds per square inch as mentioned before. It may run as high as [702] 25 pounds per square inch, but is under the control of the operating engineer.

(Deposition of Sidney W. Newell.)

Q. Does your manual, Respondent's Exhibit A-16, indicate the recommended pressure to maintain on the lubricating oil cooler or the pump?

A. Yes. On page 15 the instruction book says, "A pressure of 15-20 psi is sufficient to reach all bearings and lubricate them thoroughly. Use Navy Symbol 9250 oil from normal operating conditions. If the fresh water inlet temperature exceed 130° F., Navy Symbol 9370 may be required to control consumption within normal limits. Oil is Navy Spec. 14-0-13."

Q. Does that refer to the pressure running through the lubricating oil cooler, or does that refer to the pressure to the bearings?

A. That refers to the pressure as it would be indicated on the gauge board on which there is a lubricating oil pressure gauge. Unfortunately I can't identify which one of those gauges is the lubricating oil pressure gauge.

Q. And that construction that you have just identified in Respondent's Exhibit A-16, refers to the pressure through the lubricating oil cooler?

A. I believe that is correct. As I recall the details of the piping on this engine, I believe that it is not possible to shut off the lubricating oil from the lubricating oil cooler. In any event, you can't get pressure in the lubricating oil cooler which is more than [703] the pressure which we have been discussing, but it might be possible that there is on that engine valves which would enable you to isolate your cooler. I can't recall for sure

(Deposition of Sidney W. Newell.)

how that is done, and I can't identify from the photograph there.

Q. Referring you to the instructions on page 15 of Respondent's Exhibit A-16, the paragraph just below that marked by you, does that relate to the pressure of the oil through the lubricating oil cooler?

A. The paragraph below says that, "the relief valve, located near the pressure pumps, should be set to give 18 psi pressure on the main bearing (gauge marked 'Lubricating Oil After Filter') when the oil is warm and with the filter in operation, and the engine operating at rated speed." That relief valve is the valve which I identified on figure A as the pressure regulating valve.

Q. What type of liquid is used to cool the oil in the lubricating oil cooler?

A. Sea water is used to cool the lubricating oil.

Q. That would be salt water under normal conditions? A. Yes.

Q. Can you tell us what pressure the salt water should go into the lubricating oil cooler?

A. On page 30, the instruction book provides that the salt water pressure at rated r.p.m. of cooling water should be [704] approximately seven pounds per square inch.

Q. Mr. Newell, will you describe for us the system for cooling the cylinders and cylinder liners in the main engine on this vessel.

A. The system is in general divided into two parts; first, the fresh water system and secondly, the salt water system. The fresh water system has

(Deposition of Sidney W. Newell.)

its own engine driven pump which supplies the necessary energy to circulate the fresh water through the engine.

Q. Through what parts of the engine, please?

A. This pump discharges through a manifold which extends the length of the six cylinders of the engine. The water is divided off the manifold through each cylinder, through its related cylinder head, a portion of it passing through the exhaust valve, the remainder of it passing through a port in the cylinder head where it is then collected into another manifold which leads all of the fresh water into the exhaust manifold. After it leaves the exhaust manifold, the fresh water is led down through piping to two fresh water coolers through which it passes in parallel. The water is then taken from these fresh water coolers back to the suction of the fresh water circulating pump. There are one or two little variations from that general outline. For example, there is a thermostatic valve installed which will bypass the coolers to regulate your jacket water temperature. Actually the [705] water from the exhaust valves goes into a separate header or manifold of its own and is led directly back into the piping thus bypassing the exhaust manifold, but in general, I think that gives a good outline of the fresh water system.

Now, on the salt water system, it also has a positive displacement circulating pump.

Q. And which parts of the engine does that serve?

(Deposition of Sidney W. Newell.)

A. The salt water pump discharges into a pipe which leads toward the lubricating oil cooler. Some of the salt water will pass through the lubricating oil cooler. The amount which will pass through the lubricating oil cooler is controlled by a valve which is manually actuated. The rest of the salt water will bypass the lubricating oil cooler. Then the salt water runs through two jacket water coolers in series. There is a control valve on it also.

Q. Referring you to figure 1, on page 43 of Respondent's Exhibit A-16, Mr. Newell, does that outline the cooling water system installed in this engine?

A. Yes, figure 1, on page 43 describes it.

Q. The fresh water system is indicated by solid lines?

A. That is correct.

Q. It indicates the channel or course of the fresh water through the engine?

A. That is correct.

Q. And the dotted line shows the course of the salt water?

A. That is correct. After the salt water passes through [706] the jacket water coolers or heat exchangers, it is then discharged through the over-board discharge.

Q. Going back to the fresh water cooling system, do I understand that the fresh water circulates in an area between the cylinder liner and the cylinder?

A. That is correct.

(Deposition of Sidney W. Newell.)

Q. The fresh water serves as a coolant for that particular area of the engine?

A. Yes, sir. The fresh water cools the cylinders and cylinder liners.

Q. Generally speaking, the salt water serves to cool the fresh water or to cool the lubricating oil that runs through the engine?

A. That is correct.

Q. Figure 2, on page 44 of Respondent's Exhibit A-16—will you tell us what that represents, please?

A. That diagrammatically illustrates the lubricating oil system.

Q. Is the temperature of the lubricating oil as it leaves the heat exchangers affected by the temperature of the sea water which is brought in to serve as a coolant?

A. Yes.

Q. How is that regulated?—May I state that question again? How can that be regulated to maintain a constant temperature on the lubricating oil as it leaves the heat exchanger? [707]

A. That is regulated by controlling the amount of sea water which is permitted to pass through the lubricating oil cooler. This valve I have indicated is a valve for the salt water supply to the lubricating oil cooler which I will indicate in red on figure B, page 6.

Q. Is that manually or automatically operated?

A. That is manually operated.

Q. Will you describe briefly to us how the gears

(Deposition of Sidney W. Newell.)

at the upper and lower ends of the vertical shaft are lubricated?

A. The gears at the upper and lower ends of the vertical shaft are lubricated through either or both a dip system or by direct jets of lubricating oil through tubing from the lubricating oil pressure manifold.

Q. Is the same type oil used to lubricate those parts as is used to lubricate the rubbing surfaces inside the cylinder lining? A. Yes, the same.

Q. The same source for the oil?

A. The same source, yes.

Q. You mentioned a dip system or a dip. Will you elaborate on that, please?

A. In the camshaft housing we have a pocket or trough which is partially filled with lubricating oil so that in rotating each tooth of one of the gears will be immersed in the lubricating oil.

Q. Does that dip system supply both the gears on the upper [708] and lower ends of the vertical shaft?

A. No, it supplies only the upper gears.

Q. How are the lower vertical gears lubricated?

A. By jets of oil through the copper tubes which lead from the lubricating oil pressure headers.

Q. What is the function of this vertical shaft?

A. The vertical shaft connects and times the relative locations of the crankshaft and the camshaft as well as drives the lubricating oil pressure pump, the fuel oil pressure pump, the governor

(Deposition of Sidney W. Newell.)

and miscellaneous other necessary functions to make the engine operate.

Q. Is the source of supply for the lubrication of both ends of the vertical shaft the same?

A. The basic source of supply is the same. The detailed tubes which spray oil onto the gears are different, but they come from the same basic source.

Q. After that oil has been used on the vertical gears, does it go back into the same tank that the oil from the cylinders and crankcase goes to?

A. Yes, that all drains down into the bed and it is then pumped through the lubricating oil sump pump back to the lubricating oil day tank from where it is taken by pressure pump and then forced into the engine for reuse.

Q. At what points on the lubricating oil system are there filters installed? [709]

A. There is a metal edge type filter or strainer through which all the lubricating oil passes immediately after it is discharged by the lubricating oil pressure pump.

Q. Does that show on either diagram A or B on Respondent's Exhibit A-16?

A. Yes, it shows on diagram A, and I have marked it as lubricating oil strainer. There is also a lubricating oil filter which is of the partial flow type that is not shown on either figure A or B, but connects two places on figure B, which I have circled and marked, "To lubricating oil filter". This filter is of the absorbent type that is piped into

(Deposition of Sidney W. Newell.)

the vessel by the ship builder and may or may not be used at the discretion of the operating personnel.

Q. Are there any other filters installed on the main engine for the purpose of filtering the lubricating oil?

A. No, there are none—pardon me; yes, there is one. There is a course basket type strainer which I have marked as lubricating oil basket strainer on figure A. All of the lubricating oil as it leaves the sump in the bed of the engine passes through this strainer before it goes to the lubricating oil sump pump from which it is returned to the lubricating oil day tank.

Q. Are any of these strainers or filters that you have just referred to located between the lubricating oil cooler and the tubing or terminals entering into the cylinders and liners? [710]

A. There is no filter or strainer located between the lubricating oil cooler and the rubbing parts of the engine.

Q. How many bearings are there on the vertical shaft, Mr. Newell?

A. There are three bearings on the vertical shaft. There are two radial bearings of the bab-bitted type, one located in the camshaft housing, another located on the bed, also in the bed there is located a ball type thrust bearing.

(Deposition of Sidney W. Newell.)

Q. Do the bearings in the lower part or at the lower end of the vertical shaft constitute an integral part of the machinery connected with the drive shaft operating the propeller on the vessel?

A. If we will look at page 60 in figure 21, entitled, vertical shaft thrust bearing, we will see the bearings located at the lower end of the vertical shaft. There are identified by cross-hatching—

Q. Or is there a number symbol?

A. I can't pick up the number symbol. It is cross-hatching, the babbitt bearing of which I spoke a moment ago, then there are two bearings identified as 1455, which are in duplicate, which I referred to as ball type thrust bearing. It is actually two roller bearings but I have identified it for simplicity as a ball.

Q. The babbitt type bearings are identified on figure 21 by an arrow leading to the No. 1455-A?

A. No, sir. The babbitt bearing is identified by part No. 1452 which is actually a composite part consisting of a cast iron housing identified by slant lines which we in the shop line with babbitt material which is indicated by the cross hatched portion.

Q. Will you tell us how the babbitt bearings are lubricated?

A. The babbitt bearing is lubricated in the lower portion by means of a pressure lubricating oil line, the provisions for which are shown on figure 21.

Q. You have circled that with a red pencil?

(Deposition of Sidney W. Newell.)

A. I have circled that with a red pencil and marked it, "Lubricating oil connection".

Q. Oil is forced into those babbitt bearings under pressure then?

A. There is but one babbitt bearing there and that babbitt bearing is provided with at least one oil groove which is indicated on figure 21 by a clear portion which exists between the babbitt lining of part No. 1452, which we have already discussed and part No. 1455-A, which is the vertical shaft lower sleeve.

Q. How are the top bearings lubricated, please, Mr. Newell?

A. Apparently the instruction book does not contain a cut of that bearing, but it is in general similar in construction and similar in lubricating principle to the bearing on the lower end of the vertical shaft. [712]

Q. Is the oil furnished to those parts under pressure?

A. That is correct.

Q. Mr. Newell, did the Union Diesel Engine Company supervise the installation of that main engine aboard the Navy tanker YO-73?

A. Our contract with the Navy Department to whom we actually sold the engine provided that we were to run torsigraphic tests, and I believe in general check the installation. The facts of the matter are that I spent a week with this particular engine on this particular vessel at the time its installation was completed in the yard of Albina

(Deposition of Sidney W. Newell.)

Engine and Machine Works in Portland, Oregon.

Q. In what year would that have been?

A. That was in April, 1943.

Q. When you were last aboard the tanker Urania?

A. I was aboard the tanker Urania in November, 1948.

Q. And where was the vessel located at that time? A. Craig Shipyard, Long Beach.

Q. Prior to that time had your company received a request from the owners or operators of the vessel to furnish assistance in repairing the main engine?

A. On October 27th, 1948, we received a telegram signed, Compania Naviera Limitada, Seattle, which read, "Tanker Urania YO-73, main engine 560 horsepower, serial No. 42538 needing urgently vertical shaft drive No. 1490, also vertical [713] shaft cross bearing No. 1403. Stop. Vessel due within three days Los Angeles, California. Agent General Steamship Corporation Limited, 541 South Spring Street where please send air express above parts soonest. Stop. Please confirm by cable."

Q. Do you have that telegram with you now?

A. I have a copy of it.

Q. And you have read from a copy of the telegram as it appears from your record?

A. That is correct.

Q. And what was the date of that telegram, please?

(Deposition of Sidney W. Newell.)

A. We received that telegram on October 27th, 1948.

Q. Is that the first request you had from the Compania Naviera Limitada for assistance on main engine repairs?

A. No,—well, it was the first—I believe it was the first direct communication we had received from them. Prior to that date we had been contacted by a number of individuals to supply other parts.

Q. What individuals had requested parts from you?

A. I am not sure that I have all of the record, but my notes indicate that on February 25th, 1948, we received an inquiry from McGinity and McDonald in Seattle inquiring about cylinder liners and pistons. We also heard from Willamette Iron and Steel Company, and on May 25th, 1948, Berg and Williams wrote to us, "We are about to purchase the motor vessel YO-73 now lying at Seattle, Washington." Some [714] of the others who contacted us about it were Fisheries Supply Company in Seattle and Diesel Engineering Company in Seattle.

Q. Did you supply any parts or services for this vessel during the months of August, September or October, 1948, either to the owners of the vessel or to Commercial Ship Repair?

A. Yes, we supplied parts. I cannot recall and I have no notes here that positively identify to whom we supplied parts. I recall that directly or

(Deposition of Sidney W. Newell.)

indirectly on behalf of one Williams we sent some parts which, as I recall now, consisted of five cylinders to Seattle.

Q. Do you know when that was?

A. No, the only record that I have is that on August 2nd, 1948, we received a letter signed by P. S. Antippas advising that material was required in Seattle.

Q. Did you receive any request from Commercial Ship Repair at Seattle or Winslow, Washington to supply the services of a factory representative in connection with any repairs that were to be undertaken to the vessel Urania during the months, August, September or October, 1948?

A. No. The only record that I have is that in early September, 1948, I talked to Mr. Williams and on September 9th, 1948, I instructed Mr. John De Polo in Tacoma, Washington to, "Do work on YO tanker as directed and [715] authorized by Mr. Williams."

Q. How do you spell Mr. De Polo's name?

A. D-e P-o-l-o.

Q. Is he an employee of Union Diesel Engineering Company?

A. No, he is not a regular employee of The Union Diesel Engine Company. He worked for us a while during the war on engines similar to this one as a service engineer in Seattle, Portland and general ends of the world up there.

Q. Did your company pay Mr. De Polo for the

(Deposition of Sidney W. Newell.)

services that you instructed him to furnish to the vessel?

A. Mr. De Polo did not furnish any services to the Urania.

Mr. Hokanson: I object to the answer on the ground it is not responsive.

Q. (By Mr. Howard): Did Mr. De Polo furnish any services to the Urania?

A. He did not.

Q. Why? A. He was never called.

Q. Do you know of your own personal knowledge whether any other factory representative or representative of your company furnished any services to the tanker Urania at Winslow, Washington during August, September or October, 1948?

A. Not to the best of my knowledge.

Q. If any services had been requested would you know of them? A. I should think so.

Q. Now Mr. Newell, you stated that you were aboard the [716] tanker Urania at Long Beach in November. Do you have the date in November?

A. My notes indicate that I was aboard the vessel on both Friday, November 12th and Saturday, November 13th, 1948.

Q. And what was the occasion for your being aboard the tanker at that time?

A. I was on a trip to Southern California. The vessel was in there. They had had trouble and I was interested in finding out what I could do about the job.

(Deposition of Sidney W. Newell.)

Q. What was the nature of the inspection that you made aboard the vessel at that time?

A. I tried to find out what had happened. I tried to find out what the men were doing to correct the trouble and to prevent its recurrence.

Q. What was the condition of the main engine at that time, was it torn down?

A. Substantially dismantled.

Mr. Howard: This is off the record.

(Remarks off record.)

Q. (By Mr. Hokanson): That was where?

A. At Craig Yard at Long Beach.

Q. (By Mr. Howard): Will you state what you observed as to the condition of the main engine on the occasion of that inspection as referred to with respect to any deficiency or defect that you might have found?

A. I didn't do the work of dismantling the engine. I was [717] leaving the detail of that up to Mr. Cross, our assembly foreman, who was on the vessel and the boys he had working for him. I was not particularly perturbed about how the men were working. I was concerning myself with trying to find out what I could that was basically other than I should like it to be. The only thing that I found was water in the crankcase."

Mr. Hokanson: I move to strike the part of the answer which is not responsive, there at the end.

(Deposition of Sidney W. Newell.)

The Court: Which part? Beginning with what words?

Mr. Hokanson: I will withdraw the objection. I see the question is broad enough to cover it.

“Q. Was there oil in the crankcase at that time?

A. Yes, there was oil in the crankcase, and to find the water I put a syringe in the bottom of the crankcase and would draw up a syringe full of liquid and would get a substantial quantity of oil as well as a substantial quantity of water.

Q. Normally does water rise to the top or is it found on the bottom where it is standing with oil?

A. In a settled tank, water will be on the bottom and oil on the top. [718]

Q. Did you analyze that oil or that mixture that was brought out with the syringe to determine whether the water that you found therein was fresh water or salt water?

A. We only analyzed it by taste and it was salt water.”

Mr. Hokanson: I move to strike the answer of the witness as being a conclusion arrived at without proper scientific tests.

The Court: That motion is denied. That question goes to the weight rather than admissibility.

“Q. Are you positive of that from that test?

(Deposition of Sidney W. Newell.)

A. Only as positive as I can tell the difference between fresh water out of a tap and salt water in swimming on the beach.

Q. There was a definite salt water taste to the water? A. Yes, there was.

Q. Did you find anything else unusual or extraordinary about the condition of the engine at that time?

A. Not that I recall at the moment.

Q. You remember whether the lubricating oil cooler or heat exchanger was installed aboard the engine at the time of your inspection? [719]

A. Yes, the lubricating oil cooler was still mounted on the engine.

Q. Do you know whether that lubricating oil cooler had been removed from the engine prior to your arrival aboard and during the period that the tanker was in Long Beach?

A. I do not know from first hand that it was. At any time I ever saw it, it was mounted on the engine.

Q. Did you inspect the tubing or the internal area of the lubricating oil cooler at that time to determine its condition? A. No, I did not.

Q. Did you inspect the tubing running through the cylinders and liners on the main engine of the *Urania* on that occasion?

A. Only superficially.

Q. Did you find anything out of order?

A. No, I did not.

(Deposition of Sidney W. Newell.)

Q. Were the vertical shaft and gears in place aboard the main engine at that time?

A. I don't recall exactly the status of the work on the gears.

Q. Do you have in your employ a Mr. N. A. Cross?

A. Yes, I do.

Q. During October of 1948, was Mr. Cross sent to Manzanillo, Mexico in connection with the repairs of the main engine of that vessel? [720]

A. On October 28th, 1948, the Compania Naviera Limitada telephoned an order which was jotted down as, "Send service man to Manzanillo to check operation. Man to return to Los Angeles with vessel." This was confirmed in a telegram from them of October 28th, 1948. Mr. Cross left Oakland at 7:25 p.m. on October 28th, 1948 to go to Manzanillo to work on the Urania.

Q. And when did he return, please?

A. Mr. Cross returned to Oakland at 9:55 p.m. on November 25th.

Q. Do you know whether Mr. Cross remained with the tanker Urania from the time he left Oakland until he returned to Oakland?

A. It was the only job he had while he was away. Of course, he spent several days in traveling. He didn't live aboard the Urania when the vessel was in Long Beach. The rest of the time he was aboard the Urania, I know because I talked to him nearly every night on the telephone when he was aboard.

(Deposition of Sidney W. Newell.)

Mr. Howard: This is off the record.

(Remarks off record.)

Q. (By Mr. Howard): Did you have occasion to send any spare parts or other equipment for the main engine to either Long Beach or Manzanillo, Mexico at the request of Mr. Cross during that period? [721]

A. Yes. We sent to Mr. Cross in Long Beach new upper and lower vertical shaft gears. I took them down with me to the plane on Friday, November 12th. Other parts of comparatively a minor nature were sent down from time to time of which I have no record here.”

Mr. Howard: I would like to have the clerk mark 13 pages of invoices, identified in the deposition as Exhibit P.

The Court: May they all be marked as one exhibit?

Mr. Howard: Yes, your Honor. They are treated that way in the deposition.

(13 pages invoices marked Respondent's Exhibit A-17 for Identification.)

“Q. (By Mr. Howard): Handing you, Mr. Newell, what has been marked for identification as Claimant's and Cross Libelant's Exhibit P, will you tell us what that consists of?

(Deposition of Sidney W. Newell.)

A. There are, as I count them, 13 copies of invoices from The Union Diesel Engine Company.

Q. You mean copies of 13 pages of invoices?

A. Thirteen pages, yes, sir. They all appear to cover parts, services and expenses supplied by us in connection with the engine on the Urania.

Q. Referring again to Exhibit P, can you tell me whether [722] those invoices, as presented by your company, have been paid?

A. I am quite sure that they have been paid.

Q. Does the stamp, "Paid" of The Union Diesel Engine Company appear on each of those invoices, and what date, please?

A. They all are stamped, "Paid, December 7, 1948."

Q. And that is the stamp of your company, is it?

A. That is correct.

Q. Generally will you tell us, Mr. Newell, what parts were furnished under the invoices that are identified as Exhibit P?

A. The principal parts are No. V6-1490, vertical shaft drive gear, V6-1403, vertical shaft lower gear.

Q. When were those supplied, please?

A. They appear as having been shipped with Mr. Cross on October 28th, 1948.

(Deposition of Sidney W. Newell.)

Q. To where?

A. Shipped to MV Urania, Manzanillo, Mexico.

Q. I am not interested in details of that—if you can generally list the rest of them as to what parts were furnished?

A. One invoice covers Mr. Cross' airplane ticket to Mexico City.

Q. Each page has been numbered consecutively. Mr. Newell, will you go back. P-1 covers what items and in what amount? [723]

A. P-1 covers nine items in the amount of \$260.85.

Q. Those are parts that were shipped to Manzanillo in care of Mr. Cross when he went down?

A. Yes, sir. Mr. Cross took those parts with him when he went down on October 28th.

Q. What does P-2 cover?

A. P-2 covers airplane ticket to Mexico City, \$136.91.

Q. That is for Mr. Cross when he went down there?

A. That is for Mr. Cross' transportation to Mexico City.

Q. And P-3?

A. P-3 is a portion of the second progress invoice which covers Mr. Cross' services from October 28th to November 11th, inclusive.

Q. That is continued on P-4?

A. And it is continued on P-4. It also covers miscellaneous expenses of Mr. Cross as well as tele-

(Deposition of Sidney W. Newell.)

phone calls by myself. The total amount of the invoices covered on P-3 and P-4 is \$644.29.

Q. And P-5?

A. P-5 covers three more gears.

Q. Where were those sent, please?

A. They were sent by air freight to MV Urania and Owners, care of Craig Shipbuilding Company, Long Beach, California, and the amount of the invoice is \$282.50.

Q. And P-6?

A. P-6 covers a group of comparatively small parts primarily gaskets and lubricating oil manifold branch pipes which were shipped by air freight on November 17th, 1948 to the Motor Vessel Urania and owners, care of [724] General Steamship Corporation, Limited, 365 West Seventh Street, San Pedro (Notify consignee on arrival).

Q. The amount of that, please?

A. The amount of it was \$55.72.

Q. And P-7?

A. P-7 covers six fuel lines from manifold to valves in amount, \$54.00. The parts were forwarded by railway express to Compania Naviera Limitada, care of Simpson Spence Young Company, 52 Broadway, New York, New York.

Q. The amount of that was what?

A. The amount of that was \$54.00.

Q. Do you know whether the six fuel lines shown on P-7 were actually shipped to New York

(Deposition of Sidney W. Newell.)

or do you know whether those were shipped to the vessel at Long Beach?

A. The invoice indicates they were shipped to New York. I don't recall this particular shipment.

Q. P-8?

A. P-8 and P-9 are parts of the same invoice, and they cover approximately 56 items, in amount, \$581.98, which was shipped to the Motor Vessel Urania at Long Beach and it is indicated that they were shipped by service engineer.

Q. And P-10, please?

A. P-10 is an invoice in amount, \$361.31, covering four gears which were addressed to Motor Vessel Urania and Owners, care of General Steamship Corporation, Limited, at San Pedro. [725] It is noted that the last item covers lower vertical shaft thrust bearings, which were apparently not forwarded on previous shipment.

Q. That relates back to a previous shipment, does it? A. Yes, apparently it does."

Mr. Howard: Is there any way we could shorten this proof by stipulation as to the admissibility of this group of invoices?

Mr. Hokanson: I believe subsequently in the deposition a question is raised as to the need to furnish certain of these items in connection with the repairs arising out of the breakdown.

Mr. Howard: I propose to offer them on the

(Deposition of Sidney W. Newell.)

basis of this proof, and then in your subsequent interrogation you can cover any questions you have as to some of those items. We might save reading some pages.

The Court: We will take a recess for five minutes.

(Recess.)

The Court: You may proceed.

“Q. Would you look at the last item of page 9?

A. Yes, that is apparently the same item. On P-10 it is noted that this is an adjustment which appears to the same [726] as that on P-9.

Q. Credit was given for a part that was not delivered then? A. That is correct?

Q. P-11?

A. P-11 and P-12 are the third progress invoice. I think that P-11, P-12 and P-13 are the same invoice but the total appears to be on the front page.

Q. The item of \$1,153.13 appears on page 11 as a total? A. It appears as a total, yes.

Q. And following that there are five additional items? A. That is correct.

Q. Does the item \$441.83 relate to the total of expenses shown and listed on P-12 and P-13?

A. Yes.

Q. Then there are three additional items covering freight charges and telephone calls?

A. That is correct.

(Deposition of Sidney W. Newell.)

Q. Enumerated on P-11?

A. That is correct.

Q. Plus an item of \$36.62, covering compensation insurance?

A. That is correct.

Q. And what is the total then for those three pages, P-11, P-12 and P-13?

A. The total of those pages is \$1,656.24.

Q. Mr. Newell, are the charges shown on page P-11—what are those for?

A. The principal charges except those which we have already discussed are for services of engineers employed by Union [727] Diesel Engine Company on the Urania.

Q. And that includes your time?

A. It includes my time, the time of Mr. Cross from November 12th to November 25th, the time of Mr. Firth, and the time of M. L. Newell.

Q. All working on the main engine of the Urania?

A. That is correct.

Q. Are the charges shown on these 13 pages of invoices, identified as Exhibit P, the going market prices for the spare parts and equipment shown thereon?

A. Yes, they are; including services.

Q. And are the charges for services the going rate?

A. That is correct, they are.

Q. Those are the normal rates that you charge your customers?

A. That is correct.

Q. And do you consider that all of the charges that are included in these 13 pages of invoices are reasonable?

A. That is correct, I do.

(Deposition of Sidney W. Newell.)

Q. And they have all been paid?

A. Yes, they have.

Q. A good many of the parts that were shipped to Long Beach were requested by your service engineer, Mr. Cross, who was down there in order to complete repairs on the vessel?

A. That is correct, most of them were ordered by Mr. Cross.

Q. And all of these invoices are bills to the Compania [728] Naviera Limitada?

A. Yes, they are.

Q. Do you consider all of the time that was employed by your service engineers and yourself as covered by these invoices as necessary to effect the repairs and make the adjustments necessary to this main engine?"

Mr. Hokanson: I object to that, to the question beginning on line 25, page 31, on the ground that the witness has stated he did not supervise the repairs; he was merely there for two days looking to see what he could find was wrong with the engine, and he is therefore not competent to testify as to the necessity of all the items furnished.

The Court: He was so intimately connected with the job; do you make the point that he would have to be present every moment?

Mr. Hokanson: He has testified, your Honor, that he wasn't there to see what work was done.

(Deposition of Sidney W. Newell.)

He was there for two days merely to find out, if he could what improvements could be made, or what the basic cause for the engine difficulty was.

Mr. Howard: He was vice president of this company, directing the operations, insofar as possible, by telephone and otherwise, radiophone, from his headquarters in [729] Oakland. He has testified he was acquainted with parts, prices on the parts, etc.

The Court: Was the job under his supervision?

Mr. Howard: Yes. As vice president of the company, he was supervising the job.

The Court: This particular job?

Mr. Howard: Yes, your Honor.

Mr. Hokanson: I don't see that the testimony so shows. He states about three pages back that he was there for two days and was not concerned with the actual work that was being done. He states he was there to find out, if he could, what the difficulty was.

The Court: Do you not think that statement made by him, which you interpret as not concerned with the actual work, related to his not being concerned with the details of each workman's work working under Mr. Cross?

Mr. Hokanson: I think subsequently it develops in his testimony that he was not actually aware of everything that was done on the engine.

The Court: I think that the evidence reasonably establishes that this man was the official of The

(Deposition of Sidney W. Newell.)

Union Diesel Company who had official charge of the doing of this work. This objection is overruled.

“A. Yes, I do.”

Mr. Howard: At this time I will offer A-17, consisting of 13 pages of invoices.

Mr. Hokanson: May I reserve my objection to the admissibility of these documents based upon subsequent testimony of the witness with respect to the items contained in those invoices?

The Court: Do you ask the Court to reserve ruling until after those have been read?

Mr. Hokanson: Yes, your Honor.

The Court: That will be done.

“Q. Did you yourself or anyone representing your company remove and preserve any of the parts of the main engine or accessories or auxiliaries of the main engine that may have been replaced during the course of the repairs, either at Manzanillo or Long Beach?

A. Not to the best of my knowledge.

Q. Did you take any photographs of any such parts?

A. I did not and none were taken to the best of my knowledge.

(Deposition of Sidney W. Newell.)

Q. During the normal operation of this particular Union Diesel engine that was installed on the tanker *Urania*, can [731] you tell us what the temperature would be shown or maintained on your lubricating oil?

A. Maximum lubricating oil temperature should be approximately 135 degrees Fahrenheit.

Q. Is that indicated in your maintenance manual?

A. Yes, it is on page 30 of the instruction book. It says that lubricating oil temperature into cooler at rated load should be approximately 140 degrees Fahrenheit with the notation added that the readings are subject to slight modification depending on the operating conditions.

Q. And what temperatures would be normal in the water jacket in the cylinders during normal operation?

A. I don't know what the water temperature in the cylinders would be at normal operation.

Q. Is there a gauge on the engine room indicator to show that?

A. We have a maximum water temperature which is indicated on page 30, that the fresh water discharge from the engine at the exhaust manifold at rated load should be 145 to 150 degrees Fahrenheit with a notation added, "Important, should not exceed 160 degrees Fahrenheit." We also have a note of a temperature of 140 to 145 degrees Fahrenheit indicated as the fresh water discharge tem-

(Deposition of Sidney W. Newell.)

perature from the exhaust valve cages at rated load.

Mr. Hokanson: I object to the last part of [732] the answer as not being responsive to the question."

Mr. Hokanson: My objection there was to the responsiveness of the answer, and I believe I have stipulated there that another question would cover the objection.

The Court: You may proceed.

"Q. (By Mr. Howard): Does your manual indicate what the maximum temperature would be of the fresh water discharge from the exhaust manifold?

Mr. Hokanson: I will stipulate that that has been answered and that the answer will stand to that question, but you asked him the question to which he did not reply, namely, is there a gauge indicating. A. I said no, there was not.

Q. (By Mr. Howard): Do you have a gauge there on the engine room control platform to show the temperature of the water in the jacket between the cylinder and the cylinder liner?

A. No, there is not.

Q. In normal operation of this particular main engine, does the manufacturer recommend that any

(Deposition of Sidney W. Newell.)

additional pumps be [733] placed in operation to increase the pressure and circulation of salt water through the heat exchangers?

A. No. As far as the engine is concerned, we supplied only the main engine itself to specifications.

Q. Do you consider such a practice to be good operational procedure? A. Yes, I do.

Q. Why?

A. I don't understand your question.

Q. May I restate the question, please? Do you consider the practice of hooking up an additional pump, a standby pump, to increase the pressure of the salt water and the circulation of salt water through the heat exchanger or lubricating oil cooler to be good operational procedure?

A. A standby circulating water pump is considered good normal marine practice.

Q. Why would that be necessary?

A. The engine driven pumps might fail.

Q. Assuming that there was no failure of the engine driven pump, would there be any occasion to hook up a standby pump to increase the pressure of salt water through the lubricating oil cooler?

A. There would be occasion to increase the pressure on the salt water system if you were unable to get adequate cooling from the engine driven pumps.

Q. From your experience in the operation of this particular model of Union Diesel engine, do

(Deposition of Sidney W. Newell.)

you consider that the [734] difference in temperature of sea water that might be encountered in various areas would on any occasion necessitate the use of an additional standby pump to increase the pressure of water in the lubricating oil cooler or heat exchanger?

A. Anything might happen.

Q. In your experience, has such a practice been adopted?

A. Would you repeat that question, please?

Q. In your experience, has such a practice been adopted?

Mr. Hokanson: I object to the form of the question on the ground you don't state what that experience is."

Mr. Hokanson: My objection is repeated, your Honor.

The Court: Overruled.

"Mr. Howard: I am referring back to the previous question and answer that he has given. It is all on the same subject.

Mr. Hokanson: My objection still stands. What that experience related to has not been developed in the examination of the witness.

Q. (By Mr. Howard): You can answer the question.

(Deposition of Sidney W. Newell.)

A. I am sorry, I don't understand your question well [735] enough to be able to answer it.

Q. Do you have any personal knowledge as to whether a standby fire pump was employed on the tanker *Urania* prior to the breakdown necessitating repairs at Manzanillo and Los Angeles?

A. No, I haven't. I haven't been on the vessel between the time of the trials at Portland in 1943 and the time I was aboard the vessel in Long Beach in 1948.

Mr. Howard: Mr. Notary Public, I would like to identify this letter as Claimant and Cross-libellant's Exhibit Q, dated January 21st, 1949, consisting of two pages.

(Notary Public marks Exhibit Q.)"

Mr. Howard: Will you please mark this exhibit?
(1-21-49 letter marked Respondent's Exhibit A-18 for Identification.)

"Q. (By Mr. Howard): Mr. Newell, handing you Exhibit Q, can you tell us what that is, please?

A. That is a letter which I wrote on January 21st, 1949, addressed to Merrit, Summers & Bucey, Central Building, Seattle, Washington. It is entitled, Difficulties encountered with main propulsion engine in Panamanian Tanker *Urania*. [736]

(Deposition of Sidney W. Newell.)

Q. And that letter was written at whose request, if you know? A. I don't recall.

Q. What is contained in that letter?

A. In this letter?"

Mr. Hokanson: I will withdraw the objection I made at this point, which relates to the document speaking for itself.

The Court: Apparently the question, which is not in very good form, tends to inquire as to the nature of the contents, the kind of subject matter. Is not that really what is intended by the question?

Mr. Howard: I think we can go ahead with line 14.

The Court: You may proceed.

"Q. (By Mr. Howard): What does the letter deal with?

A. The letter deals with difficulties encountered with main propulsion engine in Panamanian Tanker Urania.

Q. And do the statements contained in the letter represent your views as to the nature and cause of the breakdown of the main engine?

A. In the letter I advised, "That our examination of the distressed main propulsion Diesel engine in the Urania [737] indicates that the following were the basic causes for troubles encountered in

(Deposition of Sidney W. Newell.)

late October, 1948." Then I proceed to give the two basic things.

Q. What are those two basic things, without reading the entire letter? Can you summarize it for us?

A. First of all, there appeared to be leakage around the terminals which lead lubricating oil from special cylinder lubricator into the cylinder liners and pistons. The second trouble was, heat exchangers were leaking and found to be quite dirty.

Q. And this report in this letter, Exhibit Q, was based on your personal inspection?

A. No, that report was in the name of The Union Diesel Engine Company and it was my synopsis of the reports that I had gotten from the men who worked on it as well as from my observation.

Q. A combination of your own observations and reports of your service engineers?

A. That is correct."

Mr. Howard: At this point I would like to offer Identification A-18.

Mr. Hokanson: I object to the admissibility of the document on the ground that it is based on hearsay.

The Court: The witness was there. His deposition [738] was being taken. Within what principle it is admissible? You are inquiring of him as to

(Deposition of Sidney W. Newell.)

the points covered by the letter and he stated them, did he not?

Mr. Howard: That is correct, but I was relying on the document being offered to show what the witness stated as of a certain date as to the cause of the engine breakdown.

The Court: The date the litigation arose?

Mr. Howard: This witness is not a party to the litigation. I submit it is a report he has made on the basis of information obtained in the usual course of business.

The Court: But the report is not made in the usual course of business; it is an extraordinary report, is it not?

Mr. Howard: That is correct. The opposite side had an opportunity in this deposition to cross-examine the witness as to the contents of the exhibit.

Mr. Hokanson: My objection stands, your Honor.

The Court: The objection is sustained.

“Q. Mr. Newell, I believe you were served with a subpoena duces tecum to produce documents for the purpose of this deposition. Can you tell us what documents you have brought [739] with you for the deposition?

A. I brought the instruction book that we have already spoken of. I also brought a drawing which

(Deposition of Sidney W. Newell.)

is merely a print of the master of figure 20 which appears on page 59 of the instruction book.

Q. And did you give a print of this drawing to either party to this action?

A. A print of that figure 20 was given to two men whose names I do not recall who represented themselves to be representatives of Commercial Ship Repair.

Q. Was a copy of that print given to anyone representing the owners?

A. I believe not. I wouldn't want to be sure of that. I don't believe there was though.

Q. Is that print that you have produced here today a spare print? A. Yes, it is.

Mr. Howard: This is off the record.

(Remarks off record.)

Mr. Howard: I would like the Notary Public to mark this as Claimant and Cross-libelant's Exhibit R.

(Notary Public marks Exhibit R.)

Q. (By Mr. Howard): This exhibit which has been marked Claimant and Cross-libelant's Exhibit R is the print that you have just previously referred to? [740] A. That is correct.

Q. And it shows at the bottom, "Figure 20-Side elevation of engine?" A. That is correct.

Q. And that refers to this engine as installed on the Diesel Tanker Urania?

A. That is correct.

Q. Have you produced any other documents to-

(Deposition of Sidney W. Newell.)

day, Mr. Newell? A. No, I haven't.

Q. Have you furnished any other information to any party to this cause concerning the main engine of the Tanker Urania?

A. Would you repeat that question, please?

Mr. Howard: Read the question.

(Question read by reporter.)

A. There has been information given to a number of parties who have represented themselves as being interested in the main engine in the Urania. I couldn't recall all of the details of everything that was given to everyone.

Q. Recently?

A. No, no information has been given recently with the exception of the figure 20, which we were just talking about.

Q. At the time that figure 20, Exhibit R, a copy of that was given to a representative of Commercial Ship Repair, did you discuss the difficulties with the main engine with those persons?

A. No, we did not discuss the difficulties.

Q. Is Mr. Cross available in Oakland or Berkeley at the [741] present time?

A. No, he is not.

Q. Where is he at the present time?

A. He is in New Orleans, Louisiana.

Q. When do you expect him back?

A. We hope that he will be back by the 2nd of April.

Q. Mr. Newell, I am going to ask you a rather

(Deposition of Sidney W. Newell.)

long question which will be repeated back to you if you miss any part of it. Will you assume, Mr. Newell, that former United States Navy Tanker YO-73, now known as Motor Vessel Urania, with which you are familiar by reason of having supplied and participated in the installation of the main engine at the Albina Machine Works in Portland in 1943; this vessel was purchased, assume, by its present owners in 1948, and in August, 1948 the Urania was taken to a repair yard on Puget Sound, Washington for a general overhaul and repair before the tanker was placed in commercial operation; assume that the owner's specifications to the repair yard for work on the Union Diesel main engine model V6, 560 horsepower, included the following work to be accomplished in the ship repair yard among other things, A, furnish labor and material to pull main engine cylinder liners; B, clean and wrap liners and store in warehouse; C, install six new cylinders in engine; D, install new liners in five cylinders; E, furnish services of factory representative to supervise operation of Diesel engine; F, furnish labor and material to repair circulating [742] system of main engine as necessary; assume that the above work was undertaken by the repair yard during the course of which the entire lubricating oil cooler or the heat exchanger system was removed from the engine room of the vessel and taken to the repair yard shops ashore for cleaning, repair and adjustment and that this piece

(Deposition of Sidney W. Newell.)

of equipment was thereafter reinstalled aboard the vessel; assume that new cylinders were installed in the engine by mechanics from the repair yard who also reinstalled the liners within the cylinders and hooked up the lubricating oil tubing terminals to the cylinders and liners; assume that the engine performed satisfactorily on sea trial but thereafter developed a severe knocking and unevenness while the vessel was under way off the West Coast of Mexico; assume that prior to this difficulty the engine had been operated at from 290 to 300 revolutions per minute and that during this period of operation the lubricating oil pressure had been maintained at 18 pounds per square inch; assume that during this time the outside sea water temperatures ranged from 55 degrees to 80 degrees Fahrenheit and that the water temperature in the outer jacket of the cylinders ranged from 120 degrees Fahrenheit to 137 degrees Fahrenheit; assume also that all normal and standard maintenance and operational procedures were adhered to and followed by the engineers on duty; assume that no additional pumps were hooked up to increase [743] the pressure on the salt water in the heat exchangers or to increase the circulation of water through the heat exchangers; assume that upon stopping and opening up the engine it was found that the lower vertical gears of the main engine were badly galled and the upper vertical gears were slightly galled; assume that it was also discovered that the ter-

(Deposition of Sidney W. Newell.)

minals leading the lubricating oil from a special cylinder lubricator to the cylinder and water jacket openings into the rubbing surfaces at the cylinder and liner were not tight, at least on some cylinders; assume that after a second breakdown it was also discovered that the tubing in the heat exchanger was leaking badly and that the tubing was quite dirty causing the lubricating oil to become contaminated with salt water as found in samples later taken from the bottom of the crankcase; Mr. Newell, assuming all of the above facts and conditions to have existed and based upon your experience and personal knowledge of the construction, installation and performance of that type and model Union Diesel engine, please state your opinion as to the nature of the breakdown?"

Mr. Hokanson: I object to the question on the ground that certain assumptions are included therein which have not been established in the evidence, such [744] as on page 40, line 13, the assumption that the lubricating oil terminals were hooked up by the repair yard, and the assumption at the top of the page involving independent work by the repair yard on the main engine.

Mr. Howard: On page 41?

Mr. Hokanson: No, at the top of page 40. The assumptions begin at the top of page 40 relating to services.

(Deposition of Sidney W. Newell.)

The Court: Is it possible that you are confusing pages 40 and 41? I see that the "hooked up" expression appears at the top of page 41. I do not see the "hooked up" expression on page 40 at the top of the page.

Mr. Hokanson: To rephrase the objection, the assumptions commencing at line 1 on page 40; install new cylinders, install new cylinder liners, furnish services of factory representative, furnish labor and material to repair circulating system of main engine as necessary—that assumption is based upon the further assertion that the repairs were made by the yard. The testimony here is that they were done at the direction and under the supervision of the chief engineer.

Then on line 13 there is the further assumption that the yard hooked up the lubricating oil tubing terminals [745] to the cylinders and liners. There is no testimony in the record to establish that.

Many of the assumptions here are presumably such as they will attempt to establish by the evidence later on, but by his own testimony, Mr. Williams has already established that some of those assumptions are incorrect.

On lines 12 and 13, page 41, there is the assumption that the tubing in the heat exchanger was leaking badly and that the tubing was quite dirty. There are additional assumptions which are not borne out by the evidence to date, and will not be borne out by their own witnesses.

(Deposition of Sidney W. Newell.)

The Court: Is there any chance that any of these conditions stated in the suppositious question will be established by further testimony later to be adduced?

Mr. Howard: May it please the Court, the last objection that counsel made as to the tubing in the heat exchanger leaking badly, we will offer considerable testimony as to that. I can cover the others also at the same time.

As to the objection starting on line 1, page 40, those items as shown in the hypothetical question are taken directly from Libelants' Exhibit 4, being the Job Order 678 for additional work, and line 13—— [746]

The Court: Is the condition in accordance with the condition therein stated in such job order?

Mr. Howard: I took the exact language out of Libelants' Exhibit 4. Any contention as to the work being performed under the direction of the chief engineer seems to me to be unimportant when their own job order says that they were to do certain work, and I have used the language of their own job order in that respect. It may be true that certain work was directed by the chief engineer, but where the job order itself says the yard is to do certain work and I have used that language in my hypothetical question, it seems to me I have adequately covered it.

Mr. Hokanson: The respondent's own witness, Mr. Williams, their representative on this job, has

(Deposition of Sidney W. Newell.)

testified that the job order which Mr. Howard has referred to, 678, Libelants' Exhibit 4, represents a summary of work done. He testified at least on two occasions that all work on the main engine was done expressly on the understanding that it was under the supervision of the chief engineer.

The mere phraseology of the particular shop orders listed there is not controlling with respect to how that work was actually accomplished. I think the testimony bears that out. That is why I object to the [747] assumptions contained in this hypothetical question.

The Court: The point just stated in the objection does not make inadmissible a supposititious question, in my opinion. As to whether or not the chief engineer may have been guilty of some oversight is another question not going into the one as to admissibility of this supposititious question. The objection is overruled.

As to what the further proof will be, you have already mentioned it, Mr. Howard, but speak more certainly at this point as to that.

Mr. Howard: I will advise the Court at this time that we will offer by deposition the testimony of witnesses at Long Beach or Los Angeles, one witness representing the Union Diesel Engine Company who himself personally supervised the removal of the lubricating oil cooler to a radiator repair shop where he attended during the course of the testing of the cooler and testified as to the

(Deposition of Sidney W. Newell.)

extent of the leaks found in the cooler.

We will also offer testimony by deposition of the man who actually made the test on the cooler, who was employed by the radiator repair shop, and will testify as to the extent and number of leaks that were found in this lubricating oil cooler and in the two water coolers. [748]

The Court: That answers my inquiry, if that is the only remaining detail of work which is involved in the objection stated by Mr. Hokanson. Will you, Mr. Hokanson, stated in this connection whether there is anything else to which your objection goes other than that?

Mr. Hokanson: Your Honor, I will limit my objection to that particular point now with respect to the tubing. Mr. Howard has not stated accurately what his evidence will show with respect to the condition of the heat exchangers. Their own witnesses all agree that there were no leaks in the tubing of these heat exchangers, and that is an assumption contained in the hypothetical question beginning at line 12, page 41.

The Court: Was there a leak somewhere else in the exchanger?

Mr. Hokanson: There is testimony to the effect that there were leaks at other points.

The Court: In the heat exchangers?

Mr. Hokanson: Yes, your Honor.

Mr. Howard: I might address the Court very briefly on that. I think there is variable testimony

(Deposition of Sidney W. Newell.)

of the witnesses as to the point—the source of the leak in the heat exchangers, as to just where it was found in the heat exchangers. [749]

The Court: The Court will overrule the objection, in view of the promise stated. I will say in that connection that counsel propounding the supposititious question guarantees that the conditions stated in the question will be substantially met in the scope of the evidence, and that if it is not so met and if the failure goes to the meat of the matter, then the question and the answer fail. If the failure is one of degree or weight rather than essential condition, then the Court as the trier of the fact depreciates the weight of the evidence adduced by the question and answer accordingly.

The objection is overruled upon that promise.

“A. The gearing was worn out.

Q. What gearing are you referring to, please?

A. The gears which you mentioned were galled.

Q. They would be the upper and lower vertical gears? A. That is correct.

Q. Please state your opinion as to the cause of the breakdown, that is, the cause of the gears wearing out.

A. We assumed that we found water in the lubricating oil, we found sea water or salt water in the lubricating oil, that is one of the basic assumptions? [750]

(Deposition of Sidney W. Newell.)

Q. Yes. That was the last assumption, Mr. Newell, would you like to have it read to you again?

A. If you would, please.

Q. This is the last part of the question: Assume that after a second breakdown, it was also discovered that the tubing in the heat exchangers was leading badly and that the tubing was quite dirty, causing the lubricating oil to become contaminated with salt water as found in samples later taken from the bottom of the crankcase. My question to you was, will you please state your opinion as to the cause of the breakdown.

Mr. Hokanson: You indicated two breakdowns. Would you in your questions specify which breakdown?"

Mr. Hokanson: My objection is the same.

The Court: Overruled.

"Q. (By Mr. Howard): As to the cause of the first breakdown of the engine.

A. You will have to give it to me again, please, the assumptions that we had made up to the time of the first breakdown.

Mr. Howard: Well, this is off the record. [751]
(Remarks off the record.)

Q. (By Mr. Howard): Is the question clear to you now?

(Deposition of Sidney W. Newell.)

A. No, it is not, sir. I do not understand what assumptions we made up to the point where you asked me what my opinion was as to the cause of the troubles that were encountered at that time.

Q. Is there any particular assumption that you don't understand or do you want the entire thing read again?

A. I do not understand what you mean by the joints or connections were not tight.

Q. I will amend my question on that by referring you to your letter of January 21, constituting Claimant's and Cross-Libelant's Exhibit Q in the first numbered paragraph of which you stated:

"1. Terminals which lead lubricating oil from special cylinder lubricator through the cylinder and jacket water openings and into the rubbing surface of the cylinder and liners were not tight as was particularly noticed on #2 cylinder." "

The Court: The objection continues, as I understand it, and the evidence is not in yet, by the mention of the letter before the Court and before the witness. Was that evidence or will that evidence in some other [752] way be properly admitted?

Mr. Howard: If the Court please, we have a situation here where the witness has previously identified a letter of a certain date which we have had identified and we have offered in evidence. There was no way then of anticipating the Court's

(Deposition of Sidney W. Newell.)

ruling on an objection to it which was not stated at the time.

When the witness comes along with this point in his testimony, he is uncertain as to certain points and in order to clarify that in his mind so that he can answer the question I have, in amplifying the question, quoted from the letter which he had written which is now Identification A-18. I will offer no other evidence on it, but it seems to me it is entirely proper to refresh the witness' memory as to a certain report he made by quoting to him from that report.

The Court: Was there any cross-examination as to that detail? The fact that the letter was identified before the examiner and the witness at the time afforded the opportunity to the opposing counsel to cross-examine with reference to it, did it not?

Mr. Hokanson: That is right, Your Honor.

The Court: Did you wish to make any other observation, Mr. Hokanson?

Mr. Hokanson: Whether this is extracted from the [753] letter which now has been rejected or not, I suppose it is a proper assumption to include in the question if counsel will establish through other sources the facts which he includes in the assumption.

The Court: Whether this fact stated in the letter is established otherwise or not, it was used by the witness for the purpose of refreshing the witness' recollection, as I understand it, and that is per-

(Deposition of Sidney W. Newell.)

missible even though the document, the exhibit is not in evidence and did not later become so.

The objection is overruled.

“A. In that letter I was referring to the water tightness of the terminals. If the terminals are not tight, it is possible for salt water to leak through—pardon me, it is possible for fresh water to leak through from the space between the liner and the cylinder by the gasket which seals the terminal, then down the liner wall by the piston and into the crankcase, and in that way contaminating the lubricating oil by the addition of fresh water.”

Mr. Hokanson: That is not responsive, Your Honor.

The Court: That answer will be stricken. It is not proper for the witness to testify into the record what [754] he meant in the letter. All he can do with that letter is to refresh his present recollection. He has to state his recollection of what the fact is independent of the letter. He keeps on referring to this letter. This letter and its contents cannot be brought into the record over the objection.

“Q. I refer back now, Mr. Newell, to my question to you, to please state your opinion as to the cause of the breakdown based upon the assumptions

(Deposition of Sidney W. Newell.)

in the extended question previously propounded to you. Do you understand?

A. I thought that I had answered it in my previous statement.

Q. Would you mind repeating you answer, please.

A. I believe that if the terminals on the cylinders which I mentioned in my letter of January 21st, were not tight, it would then be possible for fresh water to get into the lubricating oil on the engine and cause the unsatisfactory operation of the gears.

Q. Does this answer which you have given take into consideration all of the other assumptions included in the extended question which I gave you?

A. To the best of my understanding, it would.

Q. Then I now understand you to express the opinion that the cause of the breakdown on the tanker *Uránia* was the leaking of fresh water through a loose terminal on the cylinder liner permitting such fresh water to go down past the piston into the crankcase? A. That is correct.

Q. Do you consider that the cause of the breakdown involving the upper and lower vertical gears on the main engine of the tanker *Urania* was contributed to by the condition of the heat exchanger as described in my assumptions propounded in the extended question?"

The Court: I would like to know if the objection

(Deposition of Sidney W. Newell.)

which is continuing goes to the answer on line 10, concluded on line 14, page 44 (lines 17-21, page 755 of reporter's transcript).

Mr. Hokanson: It does.

Mr. Howard: If the Court please, as to that answer the witness only referred back after having refreshed his recollection from that letter, and I think his answer is independent of the statements in the letter.

The Court: It may be, but there is doubt in the Court's mind about it, and it is not made clear. The [756] Court will strike it and sustain the objection to it. However, there remains in evidence the question and answer beginning at line 19, page 44 (lines 2-7, page 756 of reporter's transcript).

Mr. Hokanson: That involves——

The Court: It may do it; it also may not. I understand it to call for his present opinion, and that is not conditioned upon his reciting in the record the facts stated in the letter. It refreshes his recollection, but there is not in evidence before this Court at this time the contents of that letter, and that is the meaning of the Court's rulings up to this time, to see to it where objection is made that the contents of that letter are not in evidence.

Mr. Hokanson: Your Honor, the question beginning at line 19, page 44, involves an assumption by the interrogator which has not been established by the assumptions contained in the previous hypothetical question, nor by the answers which have

(Deposition of Sidney W. Newell.)

already been stricken by the Court's order, and therefore the question is improper.

Mr. Howard: If the Court please, as to that item I can now advise the Court that we will by other witnesses whose depositions have been taken establish that a loose terminal was found on the cylinder liner when the vessel arrived at Los Angeles and was inspected. [757]

The Court: Whether it was a tubing or something else?

Mr. Howard: A loose terminal on the cylinder liner.

The Court: Is that something different from a tubing in the heat exchanger?

Mr. Howard: Yes, Your Honor, it is different. That is not part of the heat exchanger.

The Court: Subject to what I have said about the letter and its contents, which is not changed in the Court's remark about to be made, the Court overrules the objection to the supposititious question and permits the answer to stand, subject to the conditions which the Court has mentioned previously.

“Q. (By Mr. Howard): Will you please state your opinion as to the nature of the second breakdown of the main engine on the tanker *Urania*, based upon the same assumptions as propounded in the extended question?

(Deposition of Sidney W. Newell.)

A. We assumed, in the extended question, that the main engine on the tanker *Urania* had a leaky lubricating oil cooler, we assumed that the pressure of the salt water had been increased for one reason or another——

Q. Excuse me, I think the assumption was just the opposite. [758] May I read that part back to you?

A. Go ahead, I am trying to get it clear.

Q. One assumption in my question to you was that no additional pumps were hooked up to increase the pressure of salt water in the heat exchanger or to increase the circulation of water.

A. We did, however, assume that the lubricating oil cooler had sprung tubing, leaky tubes?

Q. Yes.

A. Then, assuming that we have a leaky cooler and we have normal operating sea water pressure, I do not believe that those two factors would go together to cause the troubles we have discussed.

Q. In your opinion, Mr. Newell, did the leaky tubes on the heat exchanger have any bearing upon the galling of the vertical gears, upper and lower, on the main engine of the tanker *Urania* on the second breakdown?

A. Not based upon the assumptions which we have made.

Q. Eliminating the assumption that the terminals leading the lubricating oil into the cylinder liners and cylinders were loose, would you then

(Deposition of Sidney W. Newell.)

express an opinion as to whether the leaky tubing in the heat exchanger would have a bearing on the second breakdown of the main engine?

A. We are assuming now that those terminals were not leaking water? [759]

Q. That they were tight.

A. If they were tight, then I do not believe that any of the assumptions that we have made would lead to the unsatisfactory performance of the gears.

Q. Would you express an opinion, please, as to the source of the salt water which you found in the bottom of the crankcase when you took a sample by syringe at Long Beach after the arrival of the tanker at that point.

Mr. Hokanson: I object to the question on the ground that he is asking for the opinion of an expert, the answer to which must be based on facts and not opinions."

Mr. Hokanson: My objection is repeated. Your Honor.

Mr. Howard: This witness has qualified himself. He is a graduate engineer and vice president of The Union Diesel Engine Company, and he has also testified as to a personal inspection and test he made by withdrawing samples of lubricating oil from the base of this engine at Long Beach when he arrived there. I think he is qualified. [760]

(Deposition of Sidney W. Newell.)

“Q. (By Mr. Howard): Did you determine the source of the salt water which you found in the bottom of the crankcase when you sampled the contents after the arrival of the tanker *Urania* at Los Angeles?

A. I did not determine the source.

Q. Will you express an opinion as to the source of that salt water?

Mr. Hokanson: The same objection.”

The Court: If he did not determine it when he made a personal inspection, is it competent for him to determine it now?

Mr. Howard: He can express an opinion as to the source, although he may not have actually located the source.

Mr. Hokanson: We are dealing with facts here, not opinions. This is a basic fact in this case, and any witness or any expert can speculate over a wide range of possibilities on a matter of this type.

Mr. Howard: Expert witnesses, if the Court please, are required to express opinions when they cannot actually state what the fact was.

The Court: The objection is overruled. [761]

“A. I believe that the salt water found its way into the lubricating oil through the lubricating oil cooler.

Mr. Howard: That is all. You may cross-examine.